The Solicitors' Journal

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CURRENT TOPICS

The New Solicitors' Remuneration Orders

THE Solicitors' Remuneration Order, 1953 (S.I. 1953 No. 117 (L.1)), and the Solicitors' Remuneration (Registered Land) Order, 1953 (S.I. 1953 No. 118 (L.2)), which were made on 26th January and are set out in full on pp. 92-93, *post*, are expressed to become operative on 1st March. (Under s. 56 of the Solicitors Act, 1932, the orders cannot take effect until one month after they have been laid before each House of Parliament, and if within that month an address is presented to Her Majesty by either House seeking the disallowance of the orders in whole or in part, an Order in Council may be made to effect such disallowance.) The changes to be made by the orders were described in broad outline by the PRESIDENT OF THE LAW SOCIETY on 28th November last (see 96 SOL. J. 837) and are discussed at p. 87, *post*; but the orders will require detailed study before their implications are fully grasped, and we hope to analyse them more fully in later issues. One admirable feature of the order affecting unregistered land is the fact that a certain degree of consolidation has been achieved by amending the order of 1883 to show actual amounts chargeable under Sched. I Pt. 1, and not, as formerly, a basic charge to which have to be added successive percentage additions. Increases in the scale for registered land conveyancing are substantial, as the following examples show: On a transaction of £2,000, the charge is increased from £18 15s. to £25; on a transaction of £6,000, from £36 15s. to £47 10s.; and on one of £10,000, from £48 15s. to £62 10s. The difference is even more marked in the case of transactions above £10,000, in respect of which the unregistered scale is also increased from 7s. 6d. per cent. to 10s. per cent. It would appear from the terms of the orders that the new Sched. II will apply to all business *transacted* on or after 1st March, but that the amended Sched. I and the new Registered Land Order will apply only to business for which *instructions* are accepted on or after that date.

Damage by Animals

THE report of the committee appointed by LORD JOWITT when Lord Chancellor to consider the law of civil liability for damage done by animals and to make recommendations was published on 27th January, 1953 (Cmd. 8746, H.M. Stationery Office, price 6d.). As the subject is "lawyer's law" it is not surprising that the chairman was the LORD CHIEF JUSTICE, or that he presided over a committee which included LORD TUCKER, Mr. Justice DEVLIN and Mr. Justice DAVIES, Professor GOODHART, Professor GLANVILLE WILLIAMS and other distinguished lawyers. The first apparently radical proposal is that the distinction between animals *feræ naturæ* and animals *mansuetæ naturæ* should be abolished, so that all actions for damage done by animals should be in future based on negligence. In practice, as the report states,

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this will not mean any diminution of responsibility, because the degree of care to be exercised in the keeping of an animal "will obviously be far higher in the case of a tiger than of a dog." In many cases the liability for negligence may well give the same guarantee of safety that was given by the old doctrine of absolute liability. The report says that similar considerations would logically lead to the abolition of the doctrine of absolute liability for cattle trespass, but on hearing evidence from the National Farmers' Union that questions of liability usually involve small amounts and are generally settled amicably, the committee held that to introduce the necessity of an allegation of negligence in such cases would promote rather than discourage litigation. Damages recoverable in this form of action should be confined, they felt, to damage to the land and crops, whether growing or gathered. They further recommend that an occupier should be under a duty to take reasonable care that cattle or poultry lawfully on his land do not escape from his land on to the highway, other than parts of the highway passing over common, waste or unenclosed ground. This doctrine, the report states, should also apply to the escape of animals on to land other than the highway causing damage to persons or chattels.

Scienter and Liability

LIABILITY for damage by animals, the report states, should not depend on *scienter*, but should depend on whether the owner or keeper has exercised reasonable care, regard being had to the nature and disposition of the animal, including its behaviour at the time of the damage and what the owner or keeper knew or ought to have known thereof. It should be for the defendant to show that he acted without negligence. Liability should rest on the owner as well as on the keeper, unless he can show that he exercised due care in entrusting the animal to the person who was the keeper at the time of the damage. The Dogs Act, 1906, s. 1 (1), should be amended, it is stated, by adding the words "or keeper" after the first two words of the subsection and a new s. 1 (2) should provide that "a person shall be deemed to keep a dog if it is in his custody or possession or that of any infant member of his household." It is further proposed that the law stated in *Cresswell* v. *Sirl* [1948] 1 K.B. 241 be altered so that when a farmer or other occupier sees a dog trespassing and shoots it and is sued, it should be a defence to prove (*a*) that the dog was trespassing on land of the defendant or his employer, and (*b*) that he reasonably believed that cattle or poultry on the land had been or would be injured by reason of the trespass, and (*c*) within forty-eight hours after the dog was shot he gave notice of the shooting to the officer in charge of the nearest police station. The committee also recommend the abolition of the remedy for distress damage feasant and the substitution of a different procedure, for detaining the animal at the cost of the owner, or if he cannot be traced for selling the animal. Professor GOODHART concurs in the report's main recommendations, but offers reservations as to the proposal to abolish the strict liability for animals *feræ naturæ* and the proposal that damage for cattle trespass should be limited to damage done to land or crops. Professor GLANVILLE WILLIAMS also concurs in the report, and adds a note on cattle trespass and freedom to shoot dogs.

Identification Parades

SINCE the *Adolf Beck* case, in which an innocent man was wrongly identified, with the result that he served a long prison sentence, the tremendous peril of reliance on evidence of identification as the only evidence of crime has been proved over and over again. At the West London Magistrates' Court on 25th January, further conclusive proof, if it were needed, of the fallibility of such evidence was provided. A lorry driver had called at a London company of flour millers and asked for 10 tons of flour for a company which later denied having given the order. Descriptions were given by witnesses from the London company, and a man was brought from Colne, Lancashire, and picked out by two witnesses as the man who had taken the flour away in a lorry. It was later discovered that an order had been given for the flour after all, and that it had been driven away by some person other than the defendant. Meanwhile the defendant had been charged and remanded on bail. When he came before the court on remand, having hitch-hiked from Lancashire, he was told that the goods had never been stolen at all. "This case," said the magistrate (Mr. E. R. GUEST) "underlines the terrible dangers of identity parades and it is not surprising that juries and magistrates are very chary of convicting on them." He decided that he had no power to award costs, but the wrongly accused person would be paid his travelling expenses and the probation officer would help him.

The Late Judge Gamon

AN outstanding member of the county court bench, the late Judge GAMON, judge of circuit No. 2 (Durham, Sunderland and Stockton) from 1936 until recently, and before that judge of circuit No. 15 in Yorkshire, died on 26th January, at the age of seventy-three. His father was a solicitor practising at Chester, and after Harrow he went to Exeter College, Oxford, where he obtained firsts in Honours, Mods. and Greats and the degree of B.C.L. In 1906 he was called to the Bar, joined the northern circuit, and later he built up a large Chancery practice in Liverpool. The late judge was deeply interested in social work and was the author of a book on the London Police Courts, with special reference to juvenile delinquency.

"Reportable" Cases

THE ever recurrent question of what is a "reportable" case is raised in the January, 1953, issue of the *Law Quarterly Review*, which welcomes the appearance of the *Weekly Law Reports* in a note which rightly takes first place among its famous notes on current legal decisions. The *Quarterly*, as well as other journals, has urged a reduction in the number of law reports for some years past. It is also apparent that the *Quarterly* suggested the form of the present *Weekly Reports* and *Law Reports* as far back as 1939 (55 L.Q.R. 29) and stated that if that form were adopted the other private reports would come to an end. The two conditions for the success of the plan, according to the present note, are that the promise to publish reports within three weeks of judgment be kept and that every reportable case be included, thereby, as the Council state, "saving the expense of subscribing to any other general series of law reports." The *Quarterly* states categorically that the new series will be inadequate "if only those cases which are said to contain some novel principle of law are reported." "The justifiable criticism that law in practice sometimes differs from law in the books is based in large part on the fact that the reported cases have failed to show those gradual shifts in emphasis which may almost imperceptibly alter a legal doctrine. The text-book writers and the teachers of law have a legitimate grievance if they are not given sufficient material on which to base a correct appreciation of this development of the law."

Costs

NON-CONTENTIOUS WORK—NEW SCALES

ELSEWHERE in this issue we publish the text of the new orders dealing with solicitors' remuneration in connection with non-contentious work. These new orders (subject to Parliamentary approval) come into operation on the 1st March next. The new scales in respect of completed sales, purchases and mortgages will apply to all cases where the instructions are accepted on or after that date, whilst so far as other non-contentious business is concerned the new order will apply to all business transacted on or after that date.

The keynote of these orders seems to be (*a*) a recognition of the principle that the remuneration of solicitors should bear some relationship to the degree of financial responsibility which they accept on their clients' behalf, a principle which hitherto has been to a large extent ignored, and (*b*) an extension of the control exercised by The Law Society over the conduct of solicitors in their dealings with their clients.

The first of these innovations is achieved by the jettisoning of item remuneration in respect of all other than contentious business and the substitution of a charge which shall be " fair and reasonable having regard to all the circumstances of the case." In short, it is now statutorily recognised that a solicitor who is dealing with a case which involves a million pounds is entitled to higher remuneration than that to which he would be entitled in a case which involves only £100, though the work entailed in each case may be precisely the same. This is a sensible and businesslike recognition of the fact that a solicitor often does accept a very grave financial responsibility in conducting his client's business, and it is a responsibility which hitherto he has had to shoulder without any gain to himself. It does not necessarily mean that solicitors are going to enjoy a considerable increase in their fees. Indeed, it may be that some solicitors whose clientele is drawn from the smaller business community will have to accept less than they would have been entitled to charge under the old system as altered by Sched. II. That system laid down a prescribed scale of charges which had little regard for anything but the work actually done, with the result that a solicitor, say, who drew a simple will for a person who wished to leave all that he possessed to his wife absolutely, and a solicitor who was instructed to draw an involved will relating to a very large estate and containing complicated settlement provisions would both receive a fee of 2s. per folio, plus an increase of 50 per cent., for their work. The former might not place a very heavy financial responsibility on the shoulders of the solicitor, but the latter certainly would do so.

Not only is the amount or value of the money or property involved in the transaction to be taken into account in determining what is a fair and reasonable charge for the solicitor to make, but other factors are to be taken into account also. Thus, the complexity of the matter or the novelty of the questions involved, the number and importance of the documents perused or prepared without regard to their length, the importance of the matter to the client and also the place where or the circumstances in which the business is transacted, are all to be taken into account. If, therefore, the client insists that the solicitor shall always attend at his place of business or home, instead of coming to the solicitor himself, thus causing disruption to the solicitor's professional practice, then in future the client will be expected to pay for his particular requirements.

The second of these innovations is achieved by setting up The Law Society as an arbiter in the matter of solicitors' charges, and, in effect, interposing the Society between the solicitor and the client where there is a dispute between those parties. The Law Society is not to be the final tribunal to which the client can appeal where he feels that his solicitor's charges are not " fair and reasonable," for he will still have the right, even where he has brought the dispute to the judgment of the Society, to have the solicitor's bill taxed by the Supreme Court Taxing Office under ss. 66 to 68 inclusive of the Solicitors Act, 1932. At first glance, it would seem that the client is to be spoon-fed in future, and the old adage *ignorantia legis neminem excusat* no longer appears to be applicable, at least so far as the client's rights in the matter of his solicitor's costs are concerned, for it is provided by the proviso to the new Sched. II that before a solicitor can bring an action to recover costs on a bill delivered under that Schedule he must, unless the costs have been taxed, draw his client's attention, in writing, to the latter's right to require the solicitor to obtain a certificate from The Law Society that the costs are fair and reasonable, and also to his right under the Solicitors Act, 1932, to have the bill of costs taxed in the Supreme Court Taxing Office.

Upon a bill of costs being referred to it, The Law Society will examine the facts and either issue a certificate that the amount of the bill is fair and reasonable or else certify what in its opinion is a fair and reasonable amount of remuneration in the circumstances of the case. Even where a " fair and reasonable " certificate is obtained, the solicitor is not then out of the wood, for it is still open to the client to insist that the bill shall be taxed, and in the event that the taxing master allows less than one-half of the amount originally charged by the solicitor, the taxing master is required to bring the facts to the attention of The Law Society. This provision may, of course, be designed as much for the protection of the solicitor as of the client, and it is to be hoped that, if too many bills are drastically reduced by the Supreme Court Taxing Office, representations will be made by The Law Society in the proper quarters for a revision of the " yard stick " by which the amount of solicitors' remuneration is measured in the Supreme Court Taxing Office.

Many questions will arise on the proper interpretation of the provisions of the new Sched. II, and we will consider these in due course, but in the meantime attention may well be turned to the new scales of costs for completed sales, purchases and mortgages. It will be observed, from a perusal of the scales, that there is no all-round increase in the scale of solicitors' remuneration, so far as unregistered land is concerned, and the solicitor whose main income is derived from ordinary sales, purchases and mortgages of moderately priced land and property will reap no particular benefit from the revision of Pt. 1 of Sched. I. In fact, the only increase which is provided for transactions relating to completed sales, purchases and mortgages is in respect of transactions where the price or the amount involved exceeds £10,000. In these cases there is an increase of 2s. 6d. per cent. in the scale for investigating and deducing title and the £100,000 limit is removed. Thus, in respect of a purchase of unregistered property for £200,000 the solicitor's charge under the old scale would have been £295 whilst under the new scale it will be £1,055. This is, of course, a very notable and well-merited increase in the fees for dealing with a transaction of such magnitude, but in as much as such transactions are a rarity with a very large proportion

of practitioners, the profession as a whole may well be forgiven if it displays only mild enthusiasm about this part of the new scale of costs.

It will be observed that there are no longer any negotiating scale fees for purchases and sales of property, and that the work in respect of such negotiations will in future be remunerated according to the new Sched. II. This means, of course, that a charge will be made which is " fair and reasonable " according to the circumstances. Negotiating fees were never too well received by the client, but in the past the solicitor at least could point to the scale laid down in the order of 1883. He has now got to persuade his client that his charge for the work done is fair and reasonable, and this may not always be a simple matter.

The mortgagee's solicitor's negotiating fee for negotiating a loan remains, with an all-round increase of 3s. 9d. per cent., and a scale fee of one-half of the amount of the mortgagee's scale is introduced for negotiating a loan on behalf of the mortgagor. This is a very good innovation, although one may well question the justice of limiting the latter to one-half of the mortgagee's scale. Moreover, it seems a pity that halfpennies should have to be introduced in a scale of solicitors' charges.

In addition, solicitors may now charge according to Sched. II for negotiating a lease. This removes an inequity, for in the past, although a lease was often the subject of negotiation by the solicitor, he was not entitled to any remuneration, since it was assumed that the scale fee for the work in connection with the lease was deemed to cover the negotiations (see *Re Field* (1885), 29 Ch. D. 608).

One feature of the new scales to be deplored is that there is no increase in the fees relating to leases. It is true that where a lease to an existing tenant is drawn closely on the lines of the current lease, the scale of charges may be more or less adequate, but so far as new leases are concerned where new and complex provisions have to be included to meet the demands of modern conditions, the scale in many cases is anything but sufficient and it is felt that an opportunity has been lost in leaving the scales as they were drawn in 1883, with the inadequate addition of 50 per cent.

The scales in respect of completed transactions relating to registered land receive an all-round addition (which cannot readily be expressed in simple percentage figures as the steps in the scale are altered) together with the removal of the £100,000 limit. The scales were generally regarded as inadequate and this increase was overdue. A distinction between the scales for registered and unregistered transactions for which there did not appear to be any very good reason has also been removed, so that the provisions of para. 1 (*k*) of the Registered Land Order of 1925, with regard to the charges of a solicitor acting for the mortgagor of registered property and for the mortgagee are, in effect, to apply in like manner in the case of a solicitor acting for the purchaser and mortgagee.

We have now briefly indicated some of the principal changes effected by the new orders. Numerous points are bound to arise in giving practical effect to the orders and we shall be dealing with some of these points in later articles on the subject.

J. L. R. R.

Landlord and Tenant Notebook

OWNER BY PURCHASE NOT LANDLORD BY PURCHASE

Newton and Another v. *Biggs* [1953] 2 W.L.R. 203; 97 SOL. J. 65 (C.A.) is the latest addition to the list of authorities interpreting the " become landlord by purchasing " qualification in the " reasonably required for himself " ground for possession of controlled premises. This is to be found in para. (*h*) of Sched. I to the Rent, etc., Restrictions (Amendment) Act, 1933: " A court shall . . . have power to make or give an order or judgment for . . . possession . . . without proof of . . . alternative accommodation (where the court considers it reasonable so to do) if . . . (*h*) the dwelling-house is reasonably required by the landlord (*not being a landlord who has become landlord by purchasing the dwelling-house or any interest therein after* . . .), for occupation as a residence for. . . ." Both the meaning of the word " purchasing " and that of the word " by " may be said to have been the subjects of controversy; in the recent case, the decision turned on that of the latter, the claim being for part of a house which the plaintiffs had let to the defendant when buying the whole house from him. With the assistance of *Epps* v. *Rothnie* [1945] K.B. 562 (C.A.) and *Fowle* v. *Bell* [1947] K.B. 242 (C.A.), the Court of Appeal decided, though the county court judge had held the contrary, that the plaintiffs did not become landlords by purchasing.

The facts of *Epps* v. *Rothnie* (as far as relevant) were that the plaintiff had bought an unoccupied house, had let it to the defendant some five years later, and a few years later still (the tenancy having expired) wanted it for his own occupation as a residence. The Court of Appeal upheld the decision of the county court judge, whose reasoning was that " in my judgment, he, the plaintiff, did not become ' landlord ' by purchasing it, but by virtue of a subsequent act, namely, by letting it for the first time to a tenant." It would, indeed, seem that " literal " interpretation was all that was required; but the county court judge, and Scott, L.J., in the Court of Appeal, reinforced their judgments by expressing their view on the object of the exception: " to protect a sitting tenant from having his house bought over his head," as it was put, though that is, of course, a phrase which must not be read literally.

In *Fowle* v. *Bell* a county court judge had drawn a distinction which the Court of Appeal were not able to approve. The plaintiffs in that case (husband and wife) had bought a house which was occupied by a tenant. Some three years later the tenant left and the plaintiffs let it to the defendants (also husband and wife). In the action, they claimed under para. (*h*) and the county court judge, while finding that they did reasonably want the house, etc., and that the hardship balance was in their favour, considered that the exception applied, " though only by accident." But the Court of Appeal, in Scott, L.J.'s judgment, held that the phraseology meant " not being a landlord who, in relation to the tenant before the court, has become that tenant's landlord by purchasing the dwelling-house or any interest therein after . . ." Again resorting to the " object " test, the learned lord justice expressed the opinion that Parliament had merely meant to ensure that someone who bought a house with a tenant in it would not be able to get rid of that tenant without proving the availability of alternative accommodation.

The facts of *Newton* v. *Biggs* were, however, rather different. In 1947 the defendant was the owner, and presumably occupier, of a house and by a " National Conditions of Sale "

contract (which was not dated but did specify a date for completion) he agreed to sell it to the plaintiffs. There were "special conditions," one of them being, "The purchaser shall be given vacant possession of the ground floor with the joint use of the bathroom upstairs and the vendor is to pay the purchaser the sum of 25s. per week inclusive for the upper floor of the premises." And when, a few years later, the landlords sued in reliance on para. (*h*), the defendant contended that the parenthetic phrase disqualified them.

Perhaps the reasoning of the Court of Appeal is most succinctly stated in the following passage with which Birkett, L.J., concluded his judgment: "In the present case it is true that the landlords became owners by purchase, and that, had they not purchased the premises, they would not have been in a position to grant a tenancy of any kind, but there is a world of difference between becoming owner by purchase and becoming a landlord by purchase within the meaning of para. (*h*), as interpreted by the Court of Appeal." This follows quotations from the judgment of Scott, L.J., in *Fowle* v. *Bell*, with its reference to object, "to prevent an outsider buying a house occupied by a tenant, giving the tenant notice to quit, and coming to court for an order to get rid of him."

I think that, if one contemplates the object in question, one must conclude that it is more accurately stated in *Fowle* v. *Bell* than in *Epps* v. *Rothnie*. "To protect a sitting tenant from having a house bought over his head" is rather too wide, unless one reads it as "to protect a sitting tenant who desires to continue sitting from being disturbed by someone who has bought the house over his head." I know the criticism may sound captious; but anyone who has acted as "Poor Man's Lawyer" will recall that it is sometimes necessary to disabuse a caller's mind of a certain too popular fallacy, namely, that a sale of any reversion is a wrong to the tenant.

There was no contingent finding of facts in *Newton* v. *Biggs*, so remission to the county court followed, where, apart from the questions of reasonableness of requiring and of hardships, the tenant has no doubt been able or will no doubt be able to urge that it would not be reasonable to make an order for possession, he having considered that the acceptance of his stipulation for a tenancy was a satisfaction of the plaintiffs' last territorial demand. There are, however, at least three authorities (two earlier cases will be found mentioned in *Rhodes* v. *Cornford* [1947] 2 All E.R. 601 (C.A.)) to show that the relevant circumstances are those existing at the date of the hearing. It may well be that, if the stipulated tenancy had been for a long term, even one determinable by the tenant only at a week's notice, the plaintiff would have agreed to it at the time; but rent control legislation, as was observed by Lord Greene, M.R., in *Cumming* v. *Danson* (1942), 112 L.J.K.B. 145 (C.A.), is for the protection of tenants; it is not for the penalising of landlords.

One may also wonder, since the decision is essentially based on the fact that the defendant's term did not commence before completion of the sale and conveyance of the freehold estate, what would have been the position if the contract of sale had specially entitled the purchasers to possession and to rents and profits before completion and they had in fact accepted gales of rent before completion. The question is one which might be more aptly dealt with in the Conveyancer's Diary than in the Landlord and Tenant Notebook; but it recalls the struggle over the meaning of the word "purchaser," technical or popular, and how, when it had been held, in *Baker* v. *Lewis* [1947] K.B. 186 (C.A.), that the "popular meaning" ought to be adopted, *Powell* v. *Cleland* [1948] 1 K.B. 262 (C.A.) (grantee of concurrent lease not affected by the qualification) showed that not only tenants might benefit by this interpretation.

R. B.

HERE AND THERE

FINANCIAL INCENTIVE

WHEN the filling up of the last lot of judicial vacancies was being discussed and speculated upon in the usual way, the usual comments were being made about the rewards and fairness of a judge's situation. Not so very long ago it used to be accepted almost as a platitude that, with salaries fixed nominally at somewhere around Napoleonic War level and sagging shabbily far below that level in real value, judicial office must lose all possible financial attraction for the best men. But, even in the best of the good old days, did it ever have any? How could it compete with the golden radiance which used to bathe the offices of Attorney-General and Solicitor-General when the double recognition of salaries and fees placed them both politically and professionally in a luxuriously cushioned class by themselves? Was there ever a time when a Simon or an F. E. Smith or a Carson would have thought of a judge's remuneration as a prize? Yet somehow or other the Bench used to get its men, and good ones too, most of them. Now the cry for larger High Court salaries isn't heard quite so loudly or insistently as before and even some judges, in their more confidential moments, occasionally admit that in the general devaluation of the professional classes they have fared no worse than most and better than some. "Professional classes" must be understood as not including either dealers in the black market or operators of those mysterious "somethings in the City" and W.1, which are still inexplicably capable of producing "*les marques extérieures de la richesse.*"

PROFIT AND LOSS ACCOUNT

THE fact seems to be that, looked at all the way round, a judgeship offers a reasonably busy leader in his fifties a short-term loss and a long-term gain. If his clerk knows his business, his arrears of fees over a period of a year (or preferably more), trickling in after appointment, will represent a very useful tax-free capital asset to absorb the first shock of reduced earnings, so that to start with, at any rate, his friends need not fear to see chill penury depress the learned sage or freeze the genial current of his soul. It is said that when the future Lord Davey exchanged the Bar for the Court of Appeal his disappointed clerk remarked bitterly, "Well, I did think Sir 'orace had a few more years work left in him." And that's another point. It takes quite a considerable physical and mental effort to earn at the Bar more than the amount of a judge's salary (or as much). Even the most robust constitution can't keep up for ever the strain of days spent hurrying from court to court, evenings in consultations and nights in studying masses of papers. Compared with that sort of hunted life, the Bench is semi-retirement, or, if that sounds disrespectful, its working conditions are at least conducive to a longer and happier expectation of active life; at worst, it's a sitting down job and not so hard either on the feet or (if the judge is as wise as he is learned) the vocal chords. Last in time but by no means least in importance, there is the matter of pension rights. Translated into terms of savings from professional earnings, it would virtually represent the unattainable, a beautiful dream substantially more remote than the possibility of winning a football pool fortune. The assurance of not having to work till you drop into the jaws either of death on the one hand or of the ever-present wolf at the back door on the other, must be a powerful inducement to climbing to safety on the Bench while you have the chance.

HONOUR INSURED AGAINST

ALL the same, there has been a certain amount of talk lately about an original idea said to have been adopted by one leader of the Bar—insuring against judicial appointment. (A couple of generations ago a man might well have wanted to insure against not getting one.) Details are naturally somewhat conjectural, but no doubt the assured would have stipulated for a lump sum on the happening of the event. The practical trouble is that most men would start too late, like millionaires hastily disposing of their property to escape death duties, with fate actually knocking at the door. Once a judgeship was seen to be a practical possibility for an individual, the premiums would be enormous. But suppose the Bar Council, like the good trade union which the unsophisticated outsider always believes it to be, really put the thing on a business footing, so that every newly called barrister was encouraged to take out such a policy, the premiums would be diminutive, except in the special instances when judgeships ran in a family—the Romers, for instance. An ingenious friend, well versed in Chancery principles, seemed to think that the notion would founder on the rock of public policy as enunciated in *Egerton* v. *Lord Brownlow* (1853), 4 H.L.Cas. 1. The trusts of the will of the Earl of Bridgewater, you remember, conferred fabulous benefits on the progeny of Lord Alford, but it was provided that if he should die "without having acquired the title of Duke or Marquis of Bridgewater to him and the heirs male of his body" the estate directed to be limited to them should cease. This was held void as being against public policy. The law lords and the judges who advised them, while affirming in the most positive terms that public corruption was not to be imagined in that year or reign, said the matter had to be looked at without reference to particular circumstances. Their expressions were none the less realistic for being polished and impeccable. "The proviso gives Lord Alford the strongest inducement to use the means of unduly influencing the dispensers of royal favour," said Lord Brougham. "In these times no one will contend that the coarse form of naked bribery would probably be used, but suppose the will had borne the date of 1678 instead of 1823 . . . Will anyone affirm that the very persons from whom some illustrious members of the House descend would have withheld their influence over, I will not say the Sovereign, but the ministers of the day . . . or would have spurned a gift of much less than £60,000 to propitiate that influence?" So, by parity of reasoning, an arrangement which created a strong motive for attempting to corrupt an incorruptible official in the Lord Chancellor's department would, one supposes, be contrary to public policy too.

RICHARD ROE.

BOOKS RECEIVED

"Current Law" Income Tax Acts Service ["CLITAS"] Release 7. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. Edinburgh: W. Green & Son, Ltd.

Select Legal Essays. By Sir P. H. WINFIELD, Q.C., F.B.A., LL.D. (Cantab.), Emeritus Professor of English Law, Cambridge, of the Inner Temple, Honorary Bencher and Barrister-at-Law. With an Editorial Preface by S. J. BAILEY, Rouse Ball Professor of English Law in the University of Cambridge. 1952. pp. xv and (with Index) 292. London: Sweet & Maxwell, Ltd. £1 17s. 6d. net.

Hayes & Jarman's Concise Forms of Wills. Eighteenth Edition. By KENNETH WARNELL RUBIN, LL.B., of Gray's Inn, Barrister-at-Law. 1952. pp. xc and (with Index) 332. London: Sweet & Maxwell, Ltd. £3 10s. net. Also First Supplement, to 30th November, 1952. 1953. pp. 36.

The Annual Charities Register and Digest. Sixteenth Edition. 1953. pp. (with Index) 395. London: Butterworth & Co. (Publishers), Ltd., and Family Welfare Association. 17s. 6d. net.

The Library of World Affairs, No. 19: International Economic Organisations. By CHARLES HENRY ALEXANDROWICZ, of Lincoln's Inn, Barrister-at-Law, Professor of International and Constitutional Law, University of Madras. 1952. pp. xii and (with Index) 263. Published under the auspices of The London Institute of World Affairs. London: Stevens and Sons, Ltd. 30s. net.

The British Commonwealth. The Development of its Laws and Constitution. Volume 7: Ceylon. By Sir IVOR JENNINGS, Q.C., Litt. D., LL.D., Vice Chancellor, University of Ceylon; and H. W. TAMBIAH, B.Sc., LL.B. (Lond.), Visiting Lecturer in the University of Ceylon, Advocate of the Supreme Court, Ceylon. 1952. pp. xvi and (with Index) 319. London: Stevens & Sons, Ltd. £2 15s. net.

Builders' Cost Control, Bonusing and Accounts. By F. BRANDWOOD, A.C.W.A., A.I.I.A., Lecturer, Municipal Technical College and School of Art, Blackburn. 1952. pp. 147. London: Gee & Co. (Publishers), Ltd. 25s. net.

Simon's Income Tax. Second Edition. Volumes I–IV. Editor-in-Chief: The Right Hon. VISCOUNT SIMON, G.C.S.I., G.C.V.O., D.C.L., LL.D., Lord High Chancellor of Great Britain, 1940–45. 1952. pp. Vol I, xix and (with Index) 660; Vol II, xv and (with Index) 696; Vol III, xv and (with Index) 615; Vol IV, lxviii and 1034. London: Butterworth & Co. (Publishers), Ltd. Five Volumes, £15 15s.; service, £2 12s. 6d. per year.

Cost Accountancy in Agriculture. By LESLIE W. BOLTON, A.C.W.A., A.C.I.S. 1952. pp. (with Index) 88. London: Gee & Co. (Publishers), Ltd. 17s. 6d. net.

Glen's Public Health Act, 1936. Sixteenth Edition. Edited by The Hon. Sir PATRICK REDMOND BARRY, M.C., one of Her Majesty's Judges of the Queen's Bench Division, and H. A. P. FISHER, M.A., of the Inner Temple, Barrister-at-Law. 1952. pp. lxiv and (with Index), 745. London: Eyre & Spottiswoode. £3 15s. net.

Exemptions from Rating. 1952. pp. xvi and (with Index) 105. London: The Incorporated Association of Rating and Valuation Officers. 16s. net.

Tristam and Coote's Probate Practice. Fifth (Cumulative) Supplement to the Nineteenth Edition. By H. A. DARLING, of the Principal Probate Registry, and T. R. MOORE, LL.B., of the Estate Duty Office. 1952. pp. xvi and D 168. London: Butterworth & Co. (Publishers), Ltd. 12s. 6d. net.

Redgrave's Factories, Truck and Shops Acts. Eighteenth Edition. By JOHN THOMPSON, M.A., of the Middle Temple and the Northern Circuit, Barrister-at-Law, and HAROLD R. ROGERS, M.A., sometime H.M. Deputy Chief Inspector of Factories. 1952. pp. lxiii and (with Index) 1418. London: Butterworth & Co. (Publishers), Ltd. £2 10s. net.

The Law Relating to Wills with Precedents of Particular Clauses and Complete Wills. Volumes I and II. By W. J. WILLIAMS, B.A., of Lincoln's Inn, Barrister-at-Law. 1952. pp. xvi, xxii and (with Index) 1389. London: Butterworth and Co. (Publishers), Ltd. £7 7s. net per set.

REVIEWS

Private International Law. Fourth Edition. By G. C. CHESHIRE, D.C.L., F.B.A. 1952. Oxford: Clarendon Press. £2 10s. net.

The latest edition of Dr. Cheshire's standard work reaches physical proportions which to some extent nullify one of the purposes expressed in the author's preface to the first edition, namely, to provide students with a shorter account of the subject than most of those formerly available. True that there are actually fewer pages in the fourth than in the third edition—larger and more handsome pages. But other writers have since stolen the palm of brevity. Needless to say, Dr. Cheshire's further object, to add constructive criticism to

exposition, is still enthusiastically pursued and triumphantly realised.

There has been extensive rewriting on the subjects of domicile, contract, annulment of marriage and the transfer of choses in possession. Only in regard to nullity is this obviously the result of judicial decisions promulgated since the last edition. *De Reneville* v. *De Reneville* and *Kenward* v. *Kenward* form the basis of the new treatment of this subject and *Risk* v. *Risk* is brought into the text, while in the course of *addenda* written to bridge a delay in publication *Pugh* v. *Pugh* is reconciled with the author's views on the law governing capacity to marry.

The chapter on contracts is reclassified and is now introduced by a discussion of the general theory of the proper law which gains considerably in clarity by the separation of those cases in which the parties have expressly selected a particular law to govern their contract from those in which the only possible tests are objective ones. The author deploys many fresh arguments against the theory of an autonomous right to choose *any* law, and is driven to a rationalisation of the *Vita Food Products* case which flies in the face of the expressed opinion of the Judicial Committee. But amid the somewhat academic treatment of this important topic, the practical reader may at least welcome the comprehensive list of *indicia* which have been held to assist in localising contracts.

The educative value of a textbook written in this interesting style goes far beyond the mere weight of knowledge it imparts. Much careful research is done under the reader's eye, and the author sets his propositions of settled law always against the background of what must inevitably, in this growing branch of jurisprudence, remain conjectural.

Ways and Means. By HENRY CECIL. 1952. London: Chapman and Hall, Ltd. 12s. 6d. net.

It is hard to classify this book, which consists of four story episodes, each self-contained, in the life of the same group of people. The first two episodes are the funniest thing this particular reviewer has read this twelve months. He is always intensely grateful to anyone who can make him laugh, and these made him laugh unrestrainedly in public and private places alike. The third episode is witty but has not the same quality of irresistible fun. The final episode introduces rather disconcertingly a moral or ethical purpose into what had been an irresponsible romp, thereby throwing the book out of balance. The first two episodes owe their perfection to form, consistency, a delicious blend of knowledge of life and law and lawyers, and the spontaneous gusto of the cast. After that the characters become more self-conscious and less amusing, while disturbing cracks appear in the unity of the construction. This is a terrible pity but not fatal. The book is well worth buying for the supremely high value of the fun in its first half.

The Sale of Land. By EDWARD F. GEORGE, LL.B., Solicitor of the Supreme Court, Attorney of the Supreme Court of South Africa, Attorney of the High Court of Southern Rhodesia. 1952. London: Sweet & Maxwell, Ltd. £3 3s. net.

The novel feature of this book is that it deals only with sales and not with other conveyancing transactions. The result is that the author is able to adopt a simple but effective classification of the subject-matter by following the order in which the various steps are taken in practice.

In the past, all students' books and most practitioners' books have treated conveyancing as a subject to be studied and expounded as a whole. The main advantage of dealing in one work with the wider subject is that detail contained under one heading may be useful in the course of transactions of a different nature. For example, investigation of title on sale often involves consideration of the validity of a strict settlement and of the powers of a tenant for life which cannot be explained adequately, except at appreciable length. The author of the book under review has made a very good effort to deal briefly with strict settlements in a chapter on Devolution of Title, but inevitably such important questions as "What is settled land?" (p. 202); "Who are the trustees?" (p. 203); and "Who is the tenant for life?" (p. 205) are answered mainly by means of quotations from the Settled Land Act, 1925, with little further explanation.

It would be unfair to make these comments without drawing attention to the statement in the author's preface that he has not attempted an exhaustive work dealing with every abstruse point that might possibly arise. In dealing with matters of reasonably common occurrence the book is quite adequate, and the subject-matter is very well arranged. The treatment of topics which are growing in importance, such as preliminary inquiries and local searches, is good. Many solicitors will not agree with the view that use is a matter of title (p. 103), but the explanations of the steps to be taken in dealing with planning matters (e.g., at p. 167) are sound and steer a reasonable course through the many difficulties facing anyone writing on conveyancing in these times.

One rather surprising omission is a discussion of the effect of the Building Materials and Housing Act, 1945, giving validity to conditions as to maximum prices of certain houses. There are a few small points on which one cannot agree with the author's views. For instance, it is not usual to make a local search (with additional inquiries) in the county register as well as in the borough register, when dealing with the land in a *county* borough, as is suggested at pp. 361 and 150; the reason given at p. 148 appears incorrect. These examples are not intended to imply any substantial disagreement with the contents of the book or any material criticism of it. The author is to be congratulated on the result of his effort to provide a work of convenient size, and articled and managing clerks, in particular, will find it most useful.

OBITUARY

MR. M. ARNOLD

Mr. Matthew Arnold, retired solicitor, formerly of Watford, died at his home at Totland Bay, Isle of Wight, on 18th January. He was admitted in 1899.

MR. R. CARRINGTON

Mr. Reginald Carrington, solicitor, of Colmore Row, Birmingham, died recently, aged 46. He was admitted in 1947.

MR. H. ELWELL

Mr. Harold Elwell, retired solicitor, late of Coleman Street, London, E.C.2, died on 24th January. He was admitted in 1898.

MR. A. S. MOORE

Mr. Arthur Sidney Moore, solicitor, of Derby, died at Bournemouth on 25th January, aged 70. He was admitted in 1905 and was President of Derby Law Society in 1945–46.

MR. J. H. PAWLYN

Mr. James Hawkins Pawlyn, retired solicitor, of Bagshot, formerly solicitor to the London County Council, died on 28th January. He was admitted in 1908.

MR. F. H. SPANNER

Mr. Frank Henry Spanner, solicitor, of Lincoln, has died at the age of 75. He was admitted in 1917.

MR. B. J. TAY

Mr. Bertram John Tay, clerk to Portsmouth magistrates from 1928 to 1949, died at his home at Southsea on 10th January, aged 64.

MR. R. WARD

Mr. Richard Ward, retired solicitor, formerly of Preston, died at Hawkhurst, Kent, on 5th January. He was admitted in 1903.

THE SOLICITORS' REMUNERATION ORDERS

S.I. 1953 No. 117 (L. 1)

SOLICITOR, ENGLAND

REMUNERATION

THE SOLICITORS' REMUNERATION ORDER, 1953

Made . . . . 26*th January*, 1953
Laid before Parliament . 27*th January*, 1953
Coming into Operation . 1*st March*, 1953

We, the Right Honourable Gavin Turnbull, Baron Simonds, Lord High Chancellor of Great Britain, the Right Honourable Rayner, Baron Goddard, Lord Chief Justice of England, the Right Honourable Sir Francis Raymond Evershed, Master of the Rolls, Dingwall Latham Bateson, Esquire, C.B.E., M.C., President of The Law Society, and Horatio Randolph Pruddah, Esquire, President of the Incorporated Law Society of Liverpool, being the persons authorised by section 56 of the Solicitors Act, 1932, do hereby, by virtue of the powers vested in us by the said section and of every other power enabling us in that behalf, order and direct as follows :—

1. This Order may be cited as the Solicitors' Remuneration Order, 1953, and the Solicitors' Remuneration Orders, 1883 to 1944, and this Order may be cited together as the Solicitors' Remuneration Orders, 1883 to 1953.

2. In paragraph 2 (*c*) of the Solicitors' Remuneration Order, 1883 (hereinafter referred to as " the Order of 1883 "), after the words " and of all other business " there shall be inserted the words " including the negotiation of sales, purchases and leases " and in the said paragraph 2 (*c*) and in paragraph 6 of the Order of 1883 for the words " according to the present system as altered by Schedule II hereto," there shall be substituted the words " in accordance with Schedule II hereto ".

3. The following scale shall be substituted for the scale of charges on sales, purchases and mortgages which is contained in Part I of Schedule I to the Order of 1883 :—

SCALE

	(1) For the first £1,000	(2) For the second and third £1,000	(3) For the fourth and each subsequent £1,000 up to £10,000	(4) For the remainder without limit
	per £100 s. d.	per £100 s. d.	per £100 s. d.	per £100 s. d.
Vendor's solicitor for conducting a sale of property by public auction, including the conditions of sale—				
When the property is sold	30 0	15 0	7 6	3 9
When the property is not sold, then on the reserved price ..	15 0	7 6	3 9	1 10½
NOTE :—*A minimum charge of £7 10 0 is to be made whether a sale is effected or not.*				
Vendor's solicitor for deducing title to freehold or leasehold property, and perusing and completing conveyance (including preparation of contract or conditions of sale, if any)	45 0	30 0	15 0	10 0
Purchaser's solicitor for investigating title to freehold or leasehold property, and preparing and completing conveyance (including perusal and completion of contract, if any)	45 0	30 0	15 0	10 0
Mortgagor's solicitor for negotiating loan	16 10½	16 10½	5 7½	3 9
Mortgagor's solicitor for deducing title to freehold or leasehold property, perusing mortgage and completing	45 0	30 0	15 0	10 0
Mortgagee's solicitor for negotiating loan	33 9	33 9	11 3	7 6
Mortgagee's solicitor for investigating title to freehold or leasehold property, and preparing and completing mortgage	45 0	30 0	15 0	10 0

4. The following amendments shall be made in the Rules applicable to Part I of Schedule I to the Order of 1883 :—

(*a*) The following Rule shall be substituted for Rule 1 :—

" 1. The commission for deducing title and perusing and completing conveyance—

(*a*) on a sale by auction, is to be chargeable on each lot of property, except that where a property held under the same title is divided into lots for convenience of sale, and the same purchaser buys several such lots and takes one conveyance, and only one abstract is delivered, the commission is to be chargeable upon the aggregate price of the lots ;

(*b*) on a sale by private treaty of two or more properties, is to be chargeable upon the aggregate price of the properties, except that where properties are held under different titles and a separate price is specified for each property, the commission is to be chargeable on the price of each such property in respect of which a separate conveyance is taken."

(*b*) In Rule 2 the words " and also one-half of the commission for negotiating the sale " shall be deleted and for the words " according to the present system as altered by Schedule II hereto " there shall be substituted the words " in accordance with Schedule II hereto ".

(*c*) In Rule 4, for the reference to £2 there shall be substituted a reference to £3.

(*d*) In Rule 5 for the words " are to be dealt with under the old system as altered by Schedule II hereto " there shall be substituted the words " are to be calculated in accordance with Schedule II hereto ".

(*e*) In Rule 6, for the words " his commissions for negotiating (if any) " there shall be substituted the words " his commission for negotiating the loan."

(*f*) In Rule 8, for the references to £5 and £3 there shall be substituted references to £7 10s. 0d. and £4 10s. 0d. respectively.

(*g*) In Rule 10 for the words " according to the present system as altered by Schedule II hereto " there shall be substituted the words " in accordance with Schedule II hereto ".

(*h*) The following Rule shall be substituted for Rule 11 :—

" 11. The scale for conducting a sale by auction shall apply only in cases where no commission is paid by the client to an auctioneer. The scale for negotiating a loan payable to a mortgagee's solicitor shall apply only to cases where the solicitor arranges and obtains the loan from a person for whom he acts. In cases of sales under the Lands Clauses Consolidation Act or any other private or public Act under which the vendor's charges are paid by the purchaser, the scale shall not apply."

(*i*) In rule 12 the words " sale or " shall be deleted.

(*j*) At the end there shall be added the following Rule :—

" 13. The scales for deducing and for investigating title shall apply to sales and purchases of leasehold property although there may have been no previous assignment or other dealing with the leasehold interest since the grant of the lease."

5. The following amendments shall be made in the Rules applicable to Part II of Schedule I to the Order of 1883 :—

(*a*) In Rule 1 for the words " according to the present system as altered by Schedule II " there shall be substituted the words " in accordance with Schedule II hereto ".

(*b*) In Rule 4 for the words " are to be dealt with under the old system as altered by Schedule II " there shall be substituted the words " are to be calculated in accordance with Schedule II hereto ".

6. The following Schedule shall be substituted for Schedule II to the Order of 1883 :—

" SCHEDULE II

Any business, not being contentious business, for which no charge is prescribed by Schedule I, or in respect of which the solicitor has, in accordance with paragraph 6 of this Order, elected to charge under Schedule II.

Such sum as may be fair and reasonable, having regard to all the circumstances of the case and in particular to—

(1) the complexity of the matter or the difficulty or novelty of the questions raised ;

(2) the skill, labour, specialised knowledge and responsibility involved on the part of the solicitor ;

(3) the number and importance of the documents prepared or perused, without regard to length ;

(4) the place where and circumstances in which the business or any part thereof is transacted ;

(5) the time expended by the solicitor ;

(6) where money or property is involved, its amount or value ; and

(7) the importance of the matter to the client :

Provided that—

(*a*) without prejudice to the provisions of sections 66, 67 and 68 of the Solicitors Act, 1932 (which relate to taxation of costs) the client may require the solicitor to obtain a certificate from The Law Society certifying that the sum charged is fair and reasonable or, if it is not, what is a fair and reasonable sum, and the sum so certified, if less than that charged, shall, in the absence of taxation, be the sum payable ;

(*b*) before the solicitor brings proceedings to recover costs on a bill delivered under this Schedule, he must, unless the costs have been taxed, have drawn the attention of the client in writing—

(i) to his right under paragraph (*a*) of this proviso to require the solicitor to obtain a certificate from The Law Society, and

(ii) to the provisions of the Solicitors Act, 1932 to 1950, with regard to taxation of costs ;

(*c*) the client shall not be entitled to require the solicitor to obtain a certificate from The Law Society under paragraph (*a*) of this proviso after the bill has been either taxed or paid ;

(*d*) on any taxation of a bill delivered under this Schedule it shall be the duty of the solicitor to satisfy the Taxing Master as to the fairness and reasonableness of his charge ; and

(*e*) if the Taxing Master allows less than one half of the amount charged, he shall bring the facts of the case to the attention of The Law Society."

7. The Solicitors' Remuneration Act General Order, 1919, and paragraphs 1 and 4 of the Solicitors' Remuneration Act General Order, 1925, and paragraph 2 of the Solicitors' Remuneration Order, 1944 (which provide for certain additions by way of percentage to the remuneration of a solicitor under the Order of 1883) shall not apply in calculating the remuneration of a solicitor in the case of business to which Part I of Schedule I or Schedule II to the Order of 1883, as amended by this Order, applies.

8. The Solicitors' Remuneration Act General Order, 1919, and the Solicitors' Remuneration (Gross Sum) Order, 1934, are hereby revoked, so, however, that the revocation of the first-mentioned Order shall not apply to business transacted before this Order comes into operation.

9. This Order shall come into operation on the first day of March, 1953, and shall apply to all business transacted on or after that date : Provided that in the case of business to which Schedule I to the Order of 1883 applies this Order shall not affect business for which instructions have been accepted before this Order comes into operation.

Dated the twenty-sixth day of January, 1953.

Simonds, C.
Goddard, C.J.
Raymond Evershed, M.R.
Dingwall L. Bateson.
H. R. Pruddah.

S.I. 1953 No. 118 (L. 2)

SOLICITOR, ENGLAND

REMUNERATION

THE SOLICITORS' REMUNERATION (REGISTERED LAND) ORDER, 1953

Made	*26th January*, 1953
Laid before Parliament .	*27th January*, 1953
Coming into Operation .	*1st March*, 1953

We, the Right Honourable Gavin Turnbull, Baron Simonds, Lord High Chancellor of Great Britain, the Right Honourable Rayner, Baron Goddard, Lord Chief Justice of England, the Right Honourable Sir Francis Raymond Evershed, Master of the Rolls, Dingwall Latham Bateson, Esquire, C.B.E., M.C., President of The Law Society, Horatio Randolph Pruddah, Esquire, President of the Incorporated Law Society of Liverpool and George Harold Curtis, Esquire, C.B., Chief Land Registrar, being the persons authorised by section 56 of the Solicitors Act, 1932, do hereby by virtue of the powers vested in us by the said section and of every other power enabling us in that behalf, order and direct as follows :—

1. This Order may be cited as the Solicitors' Remuneration (Registered Land) Order, 1953, and the Solicitors' Remuneration (Registered Land) Orders, 1925, 1936 and 1944 and this Order may be cited together as the Solicitors' Remuneration (Registered Land) Orders, 1925 to 1953.

2. In paragraph 1 of the Solicitors' Remuneration (Registered Land) Order 1925 (hereinafter referred to as " the Order of 1925 ") the expression " Schedule II remuneration " shall be substituted for the expression " item remuneration " wherever that expression occurs.

3. The following sub-paragraph shall be inserted after sub-paragraph (K) of paragraph 1 of the Order of 1925 and the sub-paragraphs lettered (L) and (M) in that paragraph shall be re-lettered (M) and (N) respectively :—

" (L) When a solicitor is acting for a purchaser of land and also for a person taking a charge thereon, he is to be entitled to receive only one half of the charges of the solicitor of the person taking the charge up to £5,000 and on any excess above £5,000 one fourth thereof, in addition to his full charges on the transfer on sale to the purchaser of the land."

4. In paragraph 2 of the Order of 1925 the words from " and the expression " to the end of the paragraph shall be deleted and there shall be substituted the words " and the expression ' Schedule II remuneration ' means the remuneration prescribed by Schedule II to the Remuneration Order, 1882, as amended by the Solicitors' Remuneration Order, 1953."

5. (1)—The following Schedule shall be substituted for the Schedule to the Order of 1925 :—

" SCHEDULE

SCALE OF REMUNERATION FOR TRANSFERS ON SALE, CHARGES, SUB-CHARGES, MORTGAGES, SUB-MORTGAGES AND TRANSFERS THEREOF

Value of Land or amount of Charge	*Scale of Remuneration*
(1) Up to and including £200 ..	£4
Over £200 but not exceeding £300	£4 10s.
For each additional £100 thereafter up to £1,000	£1 10s. per £100
For the second and third £1,000 ..	£1 per £100
For the fourth £1,000	10s. per £100
For each subsequent £1,000 up to £13,000	7s. 6d. per £100
For each subsequent £1,000 up to £17,000	5s. per £100
For the remainder without limit ..	4s. per £100

(2) Fractions of £100 under £50 are to be reckoned as £50. Fractions of £100 above £50 are to be reckoned as £100."

(2) Paragraph 1 of the Solicitors' Remuneration (Registered Land) Order, 1944 (which provides for an addition by way of percentage to the remuneration of a solicitor under the Order of 1925) shall not apply in calculating the remuneration of a solicitor under the scale substituted by this Order.

6. This Order shall come into operation on the first day of March, 1953, and shall apply to all business for which instructions are accepted on or after that date.

Dated the twenty-sixth day of January, 1953.

Simonds, C.
Goddard, C.J.
Raymond Evershed, M.R.
Dingwall L. Bateson.
H. R. Pruddah.
G. H. Curtis.

Mr. L. H. Adcock, solicitor, of West Bromwich, left £33,953 (£26,479 net).

Mr. A. W. Forsdike, Town Clerk of Kingston-on-Thames, left £19,794 (£18,831 net).

Mr. F. F. Haddock, solicitor, of Horsham, left £33,628 (£31,380 net).

Mr. F. T. Mawby, solicitor, of East Molesey, left £15,132 (£15,051 net).

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

MALAYA: PRE-OCCUPATION DEBT: DEMAND FOR REPAYMENT: ONUS: MISDIRECTION

Letchumanan Chettiar *v.* Sadayappa Chettiar

Lord Normand, Lord Cohen and Sir John Beaumont
12th January, 1953

Section 4 (2) of the Debtor and Creditor (Occupation Period) Ordinance, 1948, of the Federation of Malaya provides, *inter alia*, that in any case where payment was made in occupation currency after 31st December, 1943, of a pre-occupation capital debt which " if due was not demanded by the creditor," such payment shall be revalued in accordance with the scale set out in the schedule to the Ordinance. In October, 1941, the appellant advanced 26,000 dollars to the respondent, secured by a mortgage. That was a pre-occupation capital debt. On 16th July, 1943, the respondent paid to the appellant 10,000 dollars, and on 25th September, 1944, a further sum of 16,000 dollars, together with all interest accrued due. Those payments were in occupation currency. The mortgaged land was accordingly reconveyed by the appellant to the respondent. Thereafter the appellant contended that the payment of 16,000 dollars made on 25th September, 1944, being a payment in occupation currency made after 31st December, 1943, had not been demanded, though it was due, by him or his agent on his behalf, and should, therefore, be revalued under s. 4 (2). Under the schedule the 16,000 dollars would fall to be revalued at 1,142.86 dollars, with the result that of the capital of 26,000 dollars only 11,142.86 would have been repaid, leaving an unpaid balance of 14,857.14. The appellant accordingly instituted proceedings claiming a declaration that the lands originally mortgaged were charged with the capital sum of 14,857.14 dollars, with interest. The trial judge held that under s. 4 (2) the onus was on the respondent to prove that before repayment by the respondent there had been a demand for payment by the appellant, and he held that the respondent, who had only called one witness, had failed to prove that any demand had in fact been made. The appellant called no evidence. On appeal by the respondent the Court of Appeal of Malaya held that the onus of proving no demand was on the appellant, and that in the circumstances the proper course was not to order a new trial, but to enter judgment for the respondent. On appeal by the appellant it was contended that in view of the wrong direction on onus by the trial judge the appellant had at the trial probably, or possibly, refrained from calling a witness whom he might have called, and in that way had suffered injustice in consequence of the trial judge's wrong direction.

LORD NORMAND, giving the judgment of the Board, said that the onus was on the appellant, who relied on the terms of the Ordinance, to prove no demand. An erroneous direction on onus was ground for granting a new trial if the error had led to substantial injustice (*Doe d. Bather* v. *Brayne* (1848), 5 C.B. 655; *Brandford* v. *Freeman* (1850), 5 Ex. 734). It was going too far when it was said that an advocate did not adduce evidence which would have been important to his case merely because he had in his favour a ruling on onus and because he had formed a low opinion of his adversary's evidence and believed that the judge would reject it. The appellant had failed to show with any probability that injustice or prejudice resulted from the ruling on onus. Their lordships would humbly advise Her Majesty that the appeal should be dismissed.

APPEARANCES: *H. J. Phillimore*, Q.C. (*Bulcraig & Davis*); *C. Harvey*, Q.C., and *Gwyn Morris* (*Lawrance, Messer & Co.*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[1 W.L.R. 269**

COURT OF APPEAL

DAMAGES: PERSONAL INJURIES: GUIDANCE AS TO QUANTUM FROM AWARDS IN PREVIOUS CASES

Rushton *v.* National Coal Board

Singleton, Birkett and Romer, L.JJ. 13th January, 1953

Appeal from Byrne, J.

The plaintiff, while working in a coal mine, sustained severe injuries and the loss of an arm through the defendant employers' breach of statutory duty. The injuries were such that it was impossible to fix an artificial arm; he had to wear a bandage, and required help in putting it on, and suffered pain in the phantom limb. The defendants awarded him a permanent annual pension of £120, and provided him with alternative employment, so that his loss of earnings was relatively small. At trial, he was awarded £10,000 damages. The defendants appealed on the question of quantum only.

SINGLETON, L.J., said that loss of earnings was only a small part of the loss; many elements had to be considered, such as pain and suffering present and future, loss of amenities of life, the necessity for some measure of help. The defendants had referred to the awards in a number of recent cases, and submitted that the award in the present case was too high. For the plaintiff, it was said that no two cases were alike, and that it was impossible to standardise damages, a proposition for which there certainly was foundation. The matter had been best put by Birkett, L.J., in *Bird* v. *Cocking & Sons, Ltd.* [1951] 2 T.L.R. 1260, where it was said that, although there was no fixed and unalterable standard, and the relevant elements differed in different cases, the assessments made by the courts did form an appropriate guide to the proper figure of damages; so that, when a particular matter came for review, one of the questions was, how did the particular award accord with the general run of assessments in comparable cases? Applying that test, the damages in the present case ought not be more than £7,000, and the appeal should be allowed to that extent.

BIRKETT and ROMER, L.JJ., agreed. Appeal allowed. Damages reduced to £7,000.

APPEARANCES: *Gerald Gardiner*, Q.C., and *H. S. L. Rigg* (*R. S. S. Allen*, for *C. R. Hodgson*, Manchester); *E. Wooll*, Q.C., and *A. D. Pappworth* (*Mawby, Barrie & Letts*, for *Silverman and Livermore*, Liverpool).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 292**

FACTORY: PROTECTION OF EYES: SCOPE OF PROCESSES WITHIN THE REGULATIONS

Rees *v.* Bernard Hastie & Co., Ltd.

Somervell, Birkett and Romer, L.JJ. 21st January, 1953

Appeal from Croom-Johnson, J. (at assizes).

By s. 49 of the Factories Act, 1937, " in the case of any such process as may be specified by regulations of the Secretary of State, being a process which involves a special risk of injury to the eyes by particles or fragments thrown off in the course of the process, suitable goggles or effective screens shall . . . be provided to protect the eyes of persons employed in the process." The Protection of Eyes Regulations, 1938, made pursuant to the Act, provide that " welding or cutting of metals by means of an electrical, oxy-acetylene or similar process " is specified as a process to which s. 49 applies. The plaintiff, a cutter in the employ of the defendants, was cutting a steel sheet by means of electrically operated mechanical shears. He was bending forward to examine the work, without wearing goggles or other eye protection, when a fragment of steel flew up and injured an eye. In an action brought for breach of statutory duty, he obtained judgment and damages. The defendants appealed.

SOMERVELL, L.J., said that the question was the proper construction of the words of the regulations. The plaintiff was using a cutting tool which operated in the cold; his contention was that the regulations covered any form of cutting, if the operating power was electrical: the defendants contended that the process, if electrical, must involve high temperatures. The word " electrical " was linked with the words " oxy-acetylene," which process operated to " cut," so to speak, entirely by heat. On the evidence, in the " cutting " by the oxy-acetylene process there was danger to the eyes by the throwing off of high-temperature particles. In electrical " cutting " an arc was used, which also involved high temperatures and the danger from particles thrown off. The word " similar " in the regulations indicated a similarity in the danger to the eyes with which they were dealing; as in the oxy-acetylene process, the danger was caused by the throwing off of particles under heat, so, too, in the electrical process the danger must involve heat. " Similar process " was probably inserted to cover other possible means of obtaining a

very high temperature. As the process operated by the plaintiff was purely mechanical, and did not involve the employment of high temperatures, the regulations did not apply, and the appeal should be allowed.

BIRKETT and ROMER, L.JJ., agreed. Appeal allowed.

APPEARANCES: *F. W. Beney*, Q.C., and *G. P. Thomas* (*Helder, Roberts & Co.*, for *Roger Williams & Son*, Swansea); *R. M. Everett*, Q.C., and *T. Watkins* (*Chamberlain & Co.*, for *Beor, Wilson & Lloyd*, Swansea).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[2 W.L.R. 288**

CHANCERY DIVISION

FAMILY PROVISION: CAPITAL PAYMENT: METHOD OF COMPUTATION

***In re* Bates, deceased; Bates *v.* Rodway and Others**

Roxburgh, J. 21st January, 1953

Adjourned summons.

The plaintiff, whose husband made no provision for her in his will, applied to the court under the Inheritance (Family Provision) Act, 1938, for an order for her maintenance out of the testator's net estate. The uncontradicted evidence was that she left the testator because of his cruelty. The estate was under £2,000, and the court was asked not only to make an order for the maximum amount allowed by the Act under subs. (3) of s. 1, but also for an order for a capital payment under subs. (4) of that section. Section 1 of the 1938 Act, as originally enacted, provides: "(3) The amount of the annual income which may be made applicable for the maintenance of a testator's dependants . . . shall . . . (*b*) if the testator . . . leaves a wife . . . and no other dependant," be one-half of the annual income of the net estate. "(4) Where the value of the testator's net estate does not exceed two thousand pounds, the court shall have power to make an order . . . by way of a payment of capital, so however that the court in determining the amount of the provision, shall give effect to the principle of the last preceding subsection."

ROXBURGH, J., said that he would award the plaintiff the maximum permissible amount of one-half of the annual income of the net estate. He did not think, however, that it was expedient in the present case to make her an award of capital. If he had been obliged to decide the basis on which a capital payment should be made, he would have felt bound to follow *In re Catmull* [1943] Ch. 262, where it was laid down that the capital sum which could be awarded was the capitalised value of the amount of income which could be awarded under subs. (3) of s. 1. He did not think that that decision was *obiter*, although he did not have to decide the point. The observation of Bennett, J., in *In re Vrint* [1940] Ch. 920 that one-half of the capital could be awarded did not appear to him to have been intended as a conscious construction of subs. (4), and he would, if it had been necessary, have followed *In re Catmull* rather than *In re Vrint*.

APPEARANCES: *W. A. Bagnall* (*Theodore Goddard & Co.* for *Lawrence, Williams & Co.*, Bristol); *I. J. Lindner* (*Robins, Hay & Waters*); *L. H. L. Cohen* (*G. and G. Keith*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[1 W.L.R. 276**

WILL: CONDITION SUBSEQUENT: GIFT TO LAPSE IF BENEFICIARY SHOULD HAVE "SOCIAL OR OTHER RELATIONSHIP" WITH NAMED PERSON

***In re* Jones, deceased; Midland Bank Executor & Trustee Co., Ltd. *v.* Jones and Others**

Danckwerts, J. 22nd January, 1953

Adjourned summons.

A testator by his will directed his trustees to purchase an annuity for his daughter *D*, and directed "that if at any time *D* shall in the uncontrolled opinion of [the trustees] have social or other relationship with [a named person] . . . then *D* . . . shall absolutely forfeit and lose one-half of the annuity payments," with a gift over. The summons raised the question whether this provision was void for uncertainty.

DANCKWERTS, J., said that the provision was a condition subsequent, and so must be construed strictly. It had been argued for those interested in the gift over that the words were not too uncertain, and *Dormer (Lord)* v. *Knight* (1809), 1 Taunt. 417 (in which the words were "associate with") had been relied on, but the question of uncertainty had not been argued; and in *Jeffreys* v. *Jeffreys* (1901), 84 L.T. 417, an expression in which "associate" occurred was held void for uncertainty. "Relationship" meant the existence of a relative state of facts between two persons, and might include all kinds of things, such as membership of the same congregation, or bus queue, which merely denoted a passive existence of facts, so that the prohibition in the will was not directed solely to actual steps on the part of the daughter. The same difficulty arose as in *Jeffreys* v. *Jeffreys, supra*, and the uncertainty was not cured by the reference to the opinion of the trustees (see *In re Coxon* [1948] Ch. 747). The condition was, accordingly, void for uncertainty. Declaration accordingly.

APPEARANCES: *J. W. Brunyate, G. Cross*, Q.C., and *W. F. Waite* (*Waterhouse & Co.*); *M. J. Albery* (*Sharpe, Pritchard and Co.*); *R. R. Walter* (*G. & G. Keith*); *Wilfrid Hunt* (*Wilde, Sapte & Co.*); *V. M. Pennington* (*Clayton, Leach, Sims & Co.*); *R. H. Walton* (*Amery-Parkes & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[2 W.L.R. 283**

POSSESSION: BANKNOTES FOUND AFTER DEATH OF SPOUSES: ENTITLEMENT OF SPOUSES' ESTATES

***In re* Cohen, deceased; National Provincial Bank, Ltd. *v.* Katz**

Vaisey, J. 23rd January, 1953

Adjourned summons.

A gown manufacturer with a business in the East End of London lived for a number of years with his wife in a flat at Brighton, which was the property of the wife. The husband died in May, 1948, and the wife died in the following August. Both left wills, of which the plaintiffs were executors and trustees. After the wife's death, quantities of banknotes and coin, amounting to some £5,944, were discovered in the flat; these were hidden in a number of unlikely and unsuitable places—inside a radiogram, under a kitchen cabinet, etc. There was no evidence as to the ownership of the money, or as to when, by whom, or for what reason it had been secreted. A summons was taken out for the determination of the question whether the money belonged to the husband's estate, or to the wife's, or to both estates, and, if the latter, in what proportions.

VAISEY, J., said that the evidence provided no guidance at all which could help in determining the question raised. The money could not be *res nullius*, and the only possible claimants were the beneficiaries of the two estates. There was a line of authority which showed that there was a legal presumption that the owner of land was the owner of chattels found on the land (see *South Staffordshire Water Co.* v. *Sharman* [1896] 2 Q.B. 44, and *Johnson* v. *Pickering* [1907] 2 K.B. 437); and *Mason* v. *Lickbarrow* (1790), 1 H. Bl. 357, showed that possession of goods was *prima facie* evidence of title. In the complete absence of evidence, this line of authority was the only straw which could be grasped in such a sea of ambiguity; so that, as the flat was the wife's property, the money must be held to be her property also. That was a rather inhuman approach to the matter, and if it were permissible to speculate, the most likely guess on the facts was that the parties intended the money to be a nest egg, which, if not used during the joint lifetimes, was to enure for the benefit of the survivor. If that was so, the principle of equality in matrimonial financial transactions laid down by *Jones* v. *Maynard* [1951] Ch. 572 and *Rimmer* v. *Rimmer* [1952] 2 T.L.R. 767 should be applied to the extent that the money should be considered as subject to an equal and severable joint tenancy during the joint lifetimes; while after the death of one it would remain for the sole benefit of the survivor; in which event also the wife's estate was wholly entitled. Declaration accordingly.

APPEARANCES: *B. S. Tatham* (*Haslewood, Hare & Co.*, for *Bosley & Co.*, Brighton); *Hubert A. Rose* (*Teff & Teff*); *L. H. L. Cohen* (*Cozens-Hardy Horne* with him) (*T. V. Edwards and Co.*); *G. A. Rink* (*Gilbert Samuel & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 303**

QUEEN'S BENCH DIVISION

CONTRACT: "SUBJECT TO *FORCE MAJEURE* CONDITIONS": CONDITIONS TO BE APPLICABLE NOT AGREED: CONTRACT NOT ENFORCEABLE

British Electrical and Associated Industries (Cardiff), Ltd. *v.* Patley Pressings, Ltd.; Reid Brothers (Glasgow), Ltd., third party, Douglas Scott, Ltd., fourth party

McNair, J. 12th December, 1952

Action.

The plaintiffs claimed damages from the defendants for the repudiation by them of an agreement to sell to the plaintiffs 200 tons of mild steel angles. They also claimed an indemnity

from the defendants against any claim by their sub-buyers, to whom, as the defendants knew, the plaintiffs were selling at a profit. The defendants brought in the firm from whom they had bought the steel, as third parties, and the latter brought in as fourth parties the sellers to them of the steel. The agreements between all the parties were in similar, but not identical, terms. As between the plaintiffs and the defendants, the terms of an oral agreement were evidenced by a contract note sent to the plaintiffs by the defendants on 11th December, 1950, and accepted by the plaintiffs by a letter on the following day. The contract note, after specifying the goods to be supplied and the particulars as to delivery and terms of payment, contained the following clause: "Subject to *force majeure* conditions that the Government restricts the export of the material at the time of delivery." In answer to the plaintiffs' claim the defendants alleged that the above clause was so uncertain in its terms as to render the contract unenforceable since there were in the trade a variety of *force majeure* conditions and no agreement had been reached between the parties as to which of such conditions should apply. By the third party proceedings the defendants claimed an indemnity as from the third party in respect of any damages that they might be held liable to pay to the plaintiffs and similar claims were made by the third party against the fourth party in relation to the contract between them.

McNAIR, J., said that the first question he had to determine was whether or not words in the clause in the agreement between the plaintiffs and the defendants in relation to *force majeure* conditions were words which prevented him from holding that any enforceable contract was made. In his judgment they were. Whether the word "condition" meant "stipulations" or "clauses" on the one hand, or "contingencies" or "circumstances" on the other, the whole sentence was so vague and uncertain as to be incapable of any precise meaning, and so brought the case within the principles stated in the House of Lords in *Scammell (G.) and Nephew, Ltd.* v. *H. C. & J. G. Ouston* [1941] A.C. 251, where Lord Maugham said that: "In order to constitute a valid contract the parties must so express themselves that their meaning can be determined with a reasonable degree of certainty," and Lord Wright said that the first ground on which the court ought to hold on the facts of that case that there was no contract was: "that the language used was so obscure and so incapable of any definite or precise meaning that the court is unable to attribute to the parties any particular contractual intention." In the second place, however, he considered that the word "conditions" in the context in which it occurred clearly meant "clauses" or "stipulations," and that being so, as evidence had been given before him that there were in the trade a variety of *force majeure* conditions, the case fell quite plainly within the line of such cases as *Love & Stewart, Ltd.* v. *Samuel Instone and Co.* (1917), 33 T.L.R. 475, *Scammell* v. *Ouston, supra*, and *Bishop & Baxter, Ltd.* v. *Anglo-Eastern Trading & Industrial Co., Ltd.* [1944] K.B. 12, which seemed to establish that, notwithstanding that the parties might have thought and acted upon the basis that a contract existed between them, no consensus *ad idem* would be held to exist where there still remained to be negotiated and agreed the exact form of the clauses or conditions referred to by the parties. That being so, the plaintiffs' claim against the defendants broke down *in limine* on their failure to prove any concluded contract. With regard to the plaintiffs' claim for an indemnity, even if he had held that such a contract existed, he was of opinion that the decision of the Court of Appeal in *Trans Trust S.P.R.L.* v. *Danubian Trading Co., Ltd.* [1952] 2 Q.B. 297, the facts of which case appeared to be indistinguishable from those in the present case, would have precluded him from making the declaration in the form asked for. If he had been of opinion that the word "conditions" meant either "contingencies" or "circumstances" he should not have acceded to the argument of the third parties that the phrase in the agreement was too vague to have contractual effect. Though many cases had been cited to him in which difficulty had been experienced in construing the phrase "*force majeure*" (see in particular *Lebeaupin* v. *Richard Crispin (R.) and Co.* [1920] 2 K.B. 714), in none of them was it considered that the phrase was too vague for construction, and he was quite satisfied that an agreement for sale which was otherwise precise and contained the phrase "subject to *force majeure*" would be a valid and enforceable agreement. Having discussed other questions not arising for decision in view of his decision on the main question, McNair, J., said that the result was that each of the proceedings along the line failed and there would be judgment for the defendants against the plaintiffs; for the third parties against the defendants; and for the fourth parties against the third parties.

APPEARANCES: *Philip Goodenday* (*Alexander Fine & Co.*); *Montague Waters* (*Sylvester, Amiel & Co.*); *Lord Hailsham* (*Berrymans*, for *Borland, King & Stewart*, Glasgow); *John F. Donaldson* (*Ernest W. Long & Co.*).

[Reported by PHILIP B. DURNFORD, Esq., Barrister-at-Law] [1 W.L.R. 280

PARLIAMENTARY PRIVILEGE: PRIVATE COMMUNICATION IN BREACH OF COURT INJUNCTION NOT PRIVILEGED

Rivlin *v.* Bilainkin

McNair, J. 18th December, 1952

Application in chambers adjourned into court.

The plaintiff started proceedings against the defendant, her former husband, for alleged slander, and on 19th October, 1951, Donovan, J., granted her an interim injunction to restrain the defendant from further repetition of the alleged slander. Later the defendant took to the House of Commons five copies of a memorandum which repeated the alleged slander. He delivered one by hand to a member of Parliament and posted the other four in the House of Commons post office. The plaintiff applied to the judge in chambers for an order committing the defendant to prison for breach of the injunction.

McNAIR, J., said that the memorandum was quite plainly a libel which fell within the injunction granted by Donovan, J. It had been argued for the defendant that the court had no jurisdiction to make an order for committal, since the matter complained of occurred in the precincts of Parliament and was connected with an attempt to get parliamentary redress for an alleged grievance. Having examined the authorities, he (his lordship) was satisfied that no question of privilege arose, for various reasons, and in particular because the publication was not connected in any way with any proceeding in the House. Three senior judges of the division with whom he had had the opportunity to discuss the matter agreed with that conclusion. His lordship was, however, prepared to accept the defendant's apology and would make no order, but warned him that if anything of the kind occurred again he would be liable to instant committal.

APPEARANCES: *K. E. Shelley*, Q.C., and *Dennis Lloyd* (*Rubinstein, Nash & Co.*); *Gerald Gardiner*, Q.C., and *Morris Finer* (*Montagu's and Cox & Cardale*).

[Reported by Miss M. M. HILL, Barrister-at-Law] [2 W.L.R. 281

DOCK: ACCIDENT ON GANGWAY FROM SHIP TO WHARF: "SAFE MEANS OF ACCESS"

Dawson *v.* Euxine Shipping Co., Ltd.

McNair, J. 15th January, 1953

Action.

The plaintiff, a licensed lighterman, brought an action against the defendants, as owners of the s.s. *Henzee*, claiming damages in respect of the personal injuries which he had suffered when he slipped on a gangway leading from the ship's rail to the deck of a wharf. The defendants denied liability and pleaded that there had been no breach by them of either their statutory or common law duty to the plaintiff. Regulation 9 of the Docks Regulations, 1934, provided: "If a ship is lying at a wharf . . . for the purpose of loading . . . there shall be safe means of access for the use of persons employed at such times as they have to pass from the ship to the shore or from the shore to the ship as follows:—(*a*) Where reasonably practicable the ship's accommodation ladder or a gangway or a similar construction not less than twenty-two inches wide, properly secured, and fenced throughout on each side to a clear height of two feet nine inches by means of upper and lower rails, taut ropes or chains or by other equally safe means, . . . (*b*) In other cases a ladder of sound material and adequate length which shall be properly secured to prevent slipping . . ."

McNAIR, J., said that reg. 9 of the Docks Regulations, 1934, imposed an obligation on shipowners to provide "a safe means of access," and paras. (*a*) and (*b*) after the words "as follows" were not words of limitation, but words which prescribed what had to be done in addition to providing a safe means of access. In his judgment, therefore, shipowners did not escape the charge of breach of statutory duty merely by proving, as they had, that the gangway satisfied para. (*a*) of reg. 9. The main issue in the case was whether, as the plaintiff had contended, the treads of the gangway were in an unsafe condition at the material time. After considering the evidence he was of opinion that the treads,

although not new, were in such condition that the gangway provided a safe means of access within the meaning of reg. 9, and the plaintiff's action failed.

APPEARANCES: *W. G. Wingate* (*Pattinson & Brewer*); *Montague Berryman*, Q.C., and *Peter Dow* (*Botterell & Roche*).

[Reported by Miss SHEILA COBON, Barrister-at-Law] **[1 W.L.R. 287**

VAGRANCY: ACTS OF INDECENCY WITH COMMON PROSTITUTE IN PARKED CAR: NO OFFENCE

Carnill *v.* Edwards and Others

Lord Goddard, C.J., Croom-Johnson and Pearson, JJ.
19th January, 1953

Case stated by Sheffield justices.

Four informations were preferred against two women and a man. Each woman was charged for that she "being a common prostitute, wandering in the public highway, did behave in an indecent manner in a public highway called Claywheels Lane, there situate; contrary to s. 3 of the Vagrancy Act, 1824." The man was charged in connection with each woman that he "unlawfully did aid, abet, counsel or procure . . . a common prostitute in the commission of an act of indecency in Claywheels Lane, a public highway, contrary to s. 5 of the Summary Jurisdiction Act, 1848." One evening the two women, who were common prostitutes, got into the man's motor car in a street in the centre of Sheffield and were driven by him to Claywheels Lane, in the suburbs. The man parked the car on waste land about six yards from the lane. Acts of indecency took place in the car but were not observable except by a person who shone a torch on to the car, as did a police officer. The justices found that in the circumstances the prostitutes could not be held to be wandering in a specific street within the meaning of s. 3 of the Act of 1824, and they dismissed the informations.

LORD GODDARD, C.J., said that the justices came to a proper decision in finding, as he thought they did, that the prostitutes were not wandering at all in Claywheels Lane. He (his lordship) thought that it was impossible to say that a woman sitting in a parked motor car in a street was "wandering in the public streets or highways." The prosecutor's appeal must be dismissed.

CROOM-JOHNSON and PEARSON, JJ., agreed.

APPEARANCES: *G. F. Leslie* (*Sharpe, Pritchard & Co.*, for *John Heys*, Town Clerk, Sheffield); *J. R. Cumming-Bruce* (*Jackson and Jackson*, for *Irwin Mitchell & Co.*, Sheffield).

[Reported by Miss SHEILA COBON, Barrister-at-Law] **[1 W.L.R. 290**

PUBLIC HEALTH: PESTS: FORM OF ENFORCEMENT NOTICE

Perry *v.* Garner

Lord Goddard, C.J., Croom-Johnson and Pearson, JJ.
20th January, 1953

Case stated by Buckinghamshire justices.

The local authority were of opinion that a field occupied by the defendant was infested with rats, and required him to take steps to abate the nuisance. As he did not comply with their instructions to their satisfaction, they served him with a notice under s. 4 (1) of the Prevention of Damage by Pests Act, 1949, which provides: "If in the case of any land it appears to the local authority . . . that steps should be taken for the destruction of rats and mice on the land . . . they may serve on the owner or occupier . . . a notice requiring him to take, within such reasonable period as may be specified in the notice, such reasonable steps for the purpose aforesaid as may be specified." The notice served required the defendant ". . . to take the following steps . . . that is to say, poison treatment of infested land, such measures to be carried out to the approval of the local authority, or other work, of a not less effectual character, to be executed for the destruction of rats." The defendant, who objected to using poison, and thought that he had already taken sufficient steps, did not comply with the notice. The local authority preferred an information against him under the Act, which was dismissed by the justices, who held that the onus of proof had not been discharged. The prosecutor appealed.

LORD GODDARD, C.J., said that the notice was unspecific, and failed to comply with the section; as, after specifying poison treatment, it directed that the defendant should in the alternative do something else, which was left at large. If the notice had been confined to poison treatment, it would have complied with the Act, but as it did not, it was bad. The prosecution failed *in limine*, and the appeal failed.

CROOM-JOHNSON and PEARSON, JJ., agreed. Appeal dismissed.

APPEARANCES: *J. P. Widgery* (*Preston, Lane-Claypon and O'Kelly*, for *Reynolds, Parry-Jones & Crawford*, High Wycombe).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[2 W.L.R. 271**

ROAD TRAFFIC: PERMITTING UNINSURED DRIVING BY PERSON OTHER THAN THE OWNER OF THE VEHICLE

Lloyd *v.* Singleton

Lord Goddard, C.J., Croom-Johnson and Pearson, JJ.
20th January, 1953

Case stated by Southport justices.

By s. 35 (1) of the Road Traffic Act, 1930, it is an offence "to use, or to cause or permit any other person to use, a motor vehicle on a road unless there is in force in relation to the user of the vehicle by that person or that other person" a policy of insurance complying with the Act. The defendant, an employee of a company owning a lorry, had authority to use it and to permit others to use it on the company's business, and such user was covered by insurance. One evening, while out with his brother, the defendant was taken ill, and requested the brother, who was not an employee of the company and was uninsured, to drive the lorry back to the garage. The brother did so, and was stopped by the police. An information preferred against the defendant was dismissed by the justices, who relied on a *dictum* of MacKinnon, L.J., in *Goodbarne* v. *Buck* [1940] 1 K.B. 771. The prosecutor appealed.

LORD GODDARD, C.J., said that, in the case referred to, MacKinnon, L.J., was dealing with a set of facts in which the defendant was not the owner of the motor vehicle concerned. He had said that, to make a person liable for permitting another to use a motor vehicle, that person must be in a position to forbid the other person to use the vehicle. With that everyone would agree, but he had continued: "I can see no ground on which anyone can be in a position to forbid another person to use a motor vehicle except where he is the owner of the car." That statement was pure *obiter dictum*, expressed in an extemporary judgment, and the court could not agree with it. It entirely ignored such circumstances as arose in the present case, where the defendant was an authorised agent to permit or forbid the use of the vehicle in question. Here, the defendant was in a position to forbid his brother to drive, but had requested him to do so. The case must go back to the justices for further consideration of the terms of the policy.

CROOM-JOHNSON and PEARSON, JJ., agreed. Appeal allowed.

APPEARANCES: *P. T. Boydell* (*Sharpe, Pritchard & Co.*, for *R. E. Perrins*, Town Clerk, Southport); *R. C. Binney* (*Hancock and Scott*, for *Bellis, Son & Co.*, Southport).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[2 W.L.R. 278**

CRIMINAL LAW: TAKING OF DEPOSITIONS: EFFECT OF INADMISSIBLE EVIDENCE

R. *v.* Norfolk Quarter Sessions; *ex parte* Brunson

Lord Goddard, C.J., Croom-Johnson and Pearson, JJ.
20th January, 1953

Motions for certiorari and mandamus.

H with his son *M* were arrested in Norfolk in connection with the theft of a car at Colchester, and were handed over to the Essex police, who charged them with theft, and admitted them to bail. Later, the Essex police informed them that the bail notices, requiring them to report at Colchester police station, had been cancelled. *H* was later arrested by the Norfolk police and charged with receiving the car; at the taking of the depositions before the justices, *M* was called for the prosecution and gave evidence; *H* was committed to quarter sessions. Before quarter sessions it was contended that the committal was bad, because *M* was an incompetent witness, as there was a charge pending against him. Quarter sessions accepted the submission and quashed the indictment. The prosecutor applied to the court to quash the order of quarter sessions, and to order them to hear and determine the charge against *H*.

LORD GODDARD, C.J., said that no charge had been preferred against *M* such as to make him improper as a witness; he had been told that he need not surrender to his bail. If the defendant's submission was right, it meant that if any inadmissible evidence was given before examining justices, the committal

was vitiated; so the case was of wide importance, and the court would assume for present purposes that *M's* evidence was inadmissible. There was some support for the defendant's contention in *R.* v. *Grant* [1944] 2 All E.R. 311, but there had not been so full an argument in that case, and the witnesses had been called in a way which provoked the strong disapproval of the judge. Justices, when taking depositions, acted under s. 17 of the Indictable Offences Act, 1848, which provided that they must "take the statement on oath or affirmation of those who shall know the facts and circumstances of the case." That Act had been passed to codify the procedure of committing justices, which had become widely diverse in the course of time since the earlier Acts of Philip and Mary. If s. 17 was not complied with, the committal was bad, but it had never been suggested that the admission of inadmissible evidence in the depositions vitiated the committal, which was now, by s. 2 (1) of the Administration of Justice (Miscellaneous Provisions) Act, 1933, equivalent to a presentment by grand jury. The order of quarter sessions must be quashed, and mandamus must go to them to hear and determine the case.

CROOM-JOHNSON, J., agreeing, said that even if the committal had been bad, quarter sessions could have remitted the case to the justices to hear evidence in accordance with the statute under which the committal took place.

PEARSON, J., agreed. Orders accordingly.

APPEARANCES: *G. Howard*, Q.C., and *F. P. Keysell* (*Ford, Michelmore, Rose & Binning*, for *T. E. Rudling & Co.*, Thetford); *A. Head* (*Peacock & Goddard*, for *Reed, Wayman & Walton*, Downham Market); *L. Thompson* (*Sharpe, Pritchard & Co.*, for *H. Oswald Brown*, Norwich).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[2 W.L.R. 294**

CHILDREN AND YOUNG PERSONS: MORAL DELINQUENCY: NO EVIDENCE OF LACK OF PROPER CARE AND GUARDIANSHIP

Bowers and Another *v.* Smith; Evans and Another *v.* Same; Flack and Another *v.* Same

Lord Goddard, C.J., Croom-Johnson and Pearson, JJ.
21st January, 1953

Three cases stated by Cheltenham justices.

Three boys under seventeen years of age, whose parents had permitted them to play football, had intercourse with a young woman in each other's presence in a latrine on a football field. Two of the boys had had intercourse with her on previous occasions, but there was no evidence that the parents of any of the boys were aware of her existence or of the likelihood of her presence or of the presence of any other undesirable female on the football field. Complaints were preferred against the boys and their parents under s. 62 of the Children and Young Persons Act, 1933, alleging that the boys, being young persons under seventeen years of age, were in need of care and protection by reason of exposure to moral danger through their parents not exercising proper care and guardianship. The justices considered that the parents could not have given any or adequate instruction to the boys in standards of morality and behaviour and matters of sex as shown by the boys' conduct, and they held the complaints proved and in each case made an order under s. 62 (1) (*d*) placing the boy on probation, and a further order under s. 62 (1) (*c*) that the parent should enter into a recognisance to exercise proper care and guardianship. The boys and the parents appealed.

LORD GODDARD, C.J., said that the boys' conduct was of a most reprehensible character and deserving of some condign punishment, but it was quite another thing to say that because boys committed an offence of that sort they had done it because their parents had not exercised proper care and control over them. All that the parents had done was to send the boys to play football. Parents were entitled to hold different views about sexual instruction; some considered it undesirable. The section was never meant to apply to cases like these. If boys were found to be repeatedly committing criminal or disgraceful acts the court might well be justified in drawing the inference that parental discipline was lacking, and it ought not to be difficult to give some evidence from which the court could infer that. There was nothing in the evidence which justified the conclusion at which the justices arrived, nor, because the justices thought that the parents could not have given the boys sexual instruction, could it be said that they had not exercised proper care and guardianship. The orders, in respect of the boys as well as the parents, would be set aside.

CROOM-JOHNSON and PEARSON, JJ., agreed. Appeals allowed; order under s. 39 refused.

APPEARANCES: *S. H. Noakes* (*Gibson & Weldon*, for *A. Mason Amery & Co.*, Cheltenham); *Geoffrey Smallwood* (*Field, Roscoe and Co.*, for *Guy H. Davis*, Gloucester).

[Reported by Miss J. F. LAMB, Barrister-at-Law] **[1 W.L.R. 297**

COURT OF CRIMINAL APPEAL

RECEIVING: BREAKING AND ENTERING: ALTERNATIVE COUNTS: NO POWER IN COURT TO SUBSTITUTE CORRECT VERDICT

R. *v.* Melvin; R. *v.* Eden

Lord Goddard, C.J., Croom-Johnson and Pearson, JJ.
19th January, 1953

Appeal against conviction.

The indictment against the appellants contained two counts, one for breaking and entering and larceny, and the other for receiving. The prosecutor conducted their trial solely as one of breaking and entering, and the commissioner summed up on that basis, giving the jury no direction on receiving. The jury returned a verdict of not guilty of breaking and entering but guilty of receiving. Section 5 (2) of the Criminal Appeal Act, 1907, provides: "Where an appellant has been convicted of an offence and the jury could on the indictment have found him guilty of some other offence, and on the finding of the jury it appears to the Court of Criminal Appeal that the jury must have been satisfied of facts which proved him guilty of that other offence, the court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty of that other offence, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence, not being a sentence of greater severity."

LORD GODDARD, C.J., said that the only question which arose was whether the court had power to substitute the verdict of guilty of breaking and entering and larceny, which, if the jury had thought that the appellants were the criminals on the night in question, they ought to have found, for the verdict of receiving, which they did find. The court was of opinion that it had no such power. Section 5 (2) of the Act of 1907 would, for example, enable a court to substitute a verdict of larceny for a verdict of false pretences where the evidence showed that a person convicted of obtaining by false pretences was really guilty of larceny; and another illustration of the class of case which the section was designed to cover was the case of a person found guilty of larceny as a bailee when the court considered that he ought to have been convicted of fraudulent conversion. In *R.* v. *Evans* (1916), 12 Cr. App. R. 8, which was an exact parallel to the present case, there was a count for larceny and one for receiving, and the jury acquitted of larceny and convicted of receiving. The Court of Criminal Appeal said that they could not substitute the alternative verdict because that would be to substitute a verdict which the jury not only refused to find but on which they acquitted. As the jury here had found a verdict of not guilty of larceny and guilty of receiving, the court was of opinion that the verdict of receiving could not stand, and had no option but, with great reluctance, to quash the conviction.

APPEARANCES: *James Burge* (*Kingsley Napley & Co.*); *Edward Clarke* (*Solicitor for the Metropolitan Police*).

[Reported by Miss SHEILA COBON, Barrister-at-Law] **[2 W.L.R. 274**

At the examination for honours of candidates for admission on the Roll of Solicitors of the Supreme Court, the examination committee recommended the following as being entitled to honorary distinction—*Second Class* (in alphabetical order): E. T. Blythe, G. Campey, LL.B. Leeds, S. Cooper, LL.B. Birmingham, H. Dobin, J. Goldberg, M.A., B.C.L. Oxon, H. H. Gwyther, LL.B. London, J. E. Norton. *Third Class* (in alphabetical order): F. H. S. Bridge, B.A. Oxon, C. B. Carr, M.A. Oxon, D. J. Cleary, J. K. N. Dawson, B.A., LL.B. Cantab, J. H. Harrison, LL.B. Manchester, J. G. Hemingway, S. P. Hilton, H. E. Hughes, LL.B. Wales, G. H. Jarvis, LL.B. Leeds, J. E. Livsey. The Council have given class certificates to the candidates in the second and third classes. Eighty-three candidates gave notice for examination.

SURVEY OF THE WEEK

HOUSE OF LORDS

A. Progress of Bills

Read First Time :—

Therapeutic Substances (Prevention of Misuse) Bill [H.L.] [27th January.

To make further provision as to the substances other than penicillin to which the Penicillin Act, 1947, may be applied by regulations and to provide for relaxing in certain cases the restrictions imposed by that Act.

Read Second Time—

Berkshire County Council Bill [H.L.] [27th January.
Bromley Corporation Bill [H.L.] [27th January.
Cheshire County Council Bill [H.L.] [27th January.
City of London (Central Criminal Court) Bill [H.L.] [27th January.
Dudley Extension Bill [H.L.] [27th January.
Foundling Hospital Bill [H.L.] [29th January.
Gateshead Extension Bill [H.L.] [27th January.
Great Ouse River Board (Revival of Powers, etc.) Bill [H.L.] [28th January.
Huddersfield Corporation Bill [H.L.] [28th January.
London Hydraulic Power Bill [H.L.] [29th January.
Manchester Corporation (Advertisements) Bill [H.L.] [29th January.
National Trust Bill [H.L.] [29th January.
Newbury Corporation Bill [H.L.] [28th January.

Post Office Bill [H.L.] [29th January.

To consolidate certain enactments relating to the Post Office, with such corrections and improvements as may be authorised under the Consolidation of Enactments (Procedure) Act, 1949.

Runcorn-Widnes Bridge Bill [H.L.] [28th January.
South Essex Water Bill [H.L.] [29th January.
University of St. Andrews Bill [H.L.] [29th January.
Warkworth Harbour Bill [H.L.] [28th January.

Read Third Time :—

Emergency Laws (Miscellaneous Provisions) Bill [H.L.] [27th January.

Law Reform (Personal Injuries) (Amendment) (Scotland) Bill [H.C.] [29th January.

In Committee :—

Agricultural Land (Removal of Surface Soil) Bill [H.C.] [27th January.

B. Questions

Crimes of Violence

The Lord Chancellor said that the total number of crimes of violence, including such offences as murder, attempted murder, manslaughter, wounding, rape and robbery, known to the police for the first nine months of 1952 was 5,782. The corresponding figures for 1950 and 1951 respectively were 5,427 and 5,493. [27th January.

HOUSE OF COMMONS

A. Progress of Bills

Read First Time :—

Consolidated Fund Bill [H.C.] [29th January.

To apply a sum out of the Consolidated Fund to the service of the year ending on the thirty-first day of March, one thousand nine hundred and fifty-three.

Read Second Time :—

Navy and Marines (Wills) Bill [H.C.] [30th January.
Road Transport Lighting (Rear Lights) Bill [H.C.] [30th January.

In Committee :—

Iron and Steel Bill [H.C.] [29th January.

B. Questions

National Insurance Contributions (Prosecutions)

Mr. Turton stated that since 1st January, 1949, approximately 7,900 persons had been prosecuted for failure to pay National Insurance contributions. Of these, about 3,200 were employers who had failed to pay contributions to their employees. In the great majority of cases fines were imposed. [26th January.

Court Proceedings (Departmental Documents)

Mr. David Renton asked the Attorney-General whether his attention had been drawn to the remarks of Mr. Justice Devlin, at Winchester Assizes, on 5th December, 1952, with regard to the privilege of the Crown from disclosure of documents [*see* 96 Sol. J. 807]; and whether he would consider advising Government departments to take a less rigid attitude with regard to such disclosure.

The Attorney-General said that the question whether, in any particular case, privilege from disclosure should be claimed by the Crown in respect of any particular document was one of policy to be determined by the Minister of the department concerned. That being so, it would not be proper for him to give advice of the kind suggested. The principles to be applied, which were laid down a long time ago, were reformulated by the then Lord Chancellor, in the case of *Duncan* v. *Cammell Laird* in 1942, and great care was taken by Ministers in applying those principles in each case. [26th January.

Liverpool Quarter Sessions (Appeals)

The Home Secretary stated that the following table showed the number of persons who appealed to Liverpool City Quarter Sessions during the years 1948 to 1952 (not including appeals against bastardy orders) and the results of the appeals. Where the sentence was modified the records did not show whether it was reduced or increased. No information was available as to the number of cases, due to be tried before the stipendiary magistrate, in which the accused person elected to go for trial to quarter sessions.

Year	Number of persons	Conviction or order affirmed		Conviction or order quashed	Appeal abandoned, etc.
		Without modification of sentence or order	With modification of sentence or order		
1948 ..	115	63	19	21	12
1949 ..	162	77	47	20	18
1950 ..	143	77	29	17	20
1951 ..	111	65	23	15	8
1952 ..	133	69	26	17	21

[26th January.

Motoring Offences (Visible Vapour)

Sir David Maxwell Fyfe stated that in the Metropolitan Police District in 1951 proceedings were instituted against nine persons for "allowing avoidable smoke or visible vapour to be emitted from a motor vehicle." All these persons were convicted and fined. Statistics were not available as regards the rest of the country. [26th January.

Estate Duties (Town and Country Planning Act)

Mr. Boyd Carpenter stated that the Government was considering the position of those estates of deceased persons where death duties had been paid on the value of claims under the Town and Country Planning Act, 1947, against the £300 million global sum and the claims would not now, by reason of the Town and Country Planning Bill, 1952, be paid to the estates. He could not at present, however, make any statement. [29th January.

Law as to Adoption of Children

The Home Secretary stated that he had decided to appoint a committee to consider the present law relating to the adoption of children and to report whether any, and if so what, changes in policy or procedure were desirable in the interests of the welfare of the children. The chairman would be Sir Gerald Hurst, Q.C., and the secretary Miss J. M. Northover, of the Home Office.

The Home Secretary was replying to a question as to whether he would propose an amendment to the law to enable courts in this country to make adoption orders in favour of persons domiciled here but resident abroad. [29th January.

STATUTORY INSTRUMENTS

Bacon (Rationing) (Amendment) Order, 1953. (S.I. 1953 No. 74.)

Exchange Control (Declarations and Evidence) (Amendment) Order, 1953. (S.I. 1953 No. 98.)

Fertilisers (1952 Prices) (Amendment No. 1) Order, 1953. (S.I. 1953 No. 99.)

Hackney (Councillors and Wards) Order, 1953. (S.I. 1953 No. 106.) 6d.

London Traffic (Beaconsfield) Regulations, 1953. (S.I. 1953 No. 89.)

London Traffic (Prescribed Routes) (No. 4) Regulations, 1953. (S.I. 1953 No. 90.)

London Traffic (Unilateral Waiting) Regulations, 1953. (S.I. 1953 No. 80.) 6d.

Meals Service (Scotland) Regulations, 1953. (S.I. 1953 No. 65 (S. 7).) 5d.

Meat (Rationing) (Amendment) Order, 1953. (S.I. 1953 No. 75.)

Perambulator and Invalid Carriage Wages Council (Great Britain) Wages Regulation (Holidays) Order, 1953. (S.I. 1953 No. 87.)

Superannuation (Birmingham Royal Institution for the Blind and Birmingham City Council) Interchange Rules, 1953. (S.I. 1953 No. 105.)

Tees Valley Water Order, 1953. (S.I. 1953 No. 104.)

Welland River Board (Maxey Internal Drainage District) Order, 1952. (S.I. 1953 No. 77.)

Wild Birds Protection (Gloucestershire) Order, 1953. (S.I. 1953 No. 93.)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d. post free.]

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 102-103 Fetter Lane, E.C.4, and contain the name and address of the subscriber, and a stamped addressed envelope.

Landlord and Tenant—Periodic Tenancy Following Fixed Term—Date and Length of Notice to Quit

Q. *A* is the tenant of a furnished flat under an agreement which expresses the tenancy to be for " the term of two years certain from the 19th day of April, 1949, terminable thereafter at the option of either party by three calendar months' previous notice in writing given by either party to the other at the yearly rent of £*x* to be paid monthly in advance on the 19th day of each month in each and every year during the continuance of this agreement." The landlord contends that he is entitled to give notice to quit to *A* on 25th March expiring on 24th June, but we are inclined to the opinion that the tenancy is a yearly one and that any notice to quit must be given so as to expire at the end of some year of the tenancy, which in this case is 19th April (see *Dixon* v. *Bradford Railway Servants Society* [1904] 1 K.B. 444). If this is so, then notice would have to be given not later than 19th January to expire on the following 19th April. Moreover, even if the tenancy is held to be a quarterly one, as the landlord apparently contends, we consider that it can only be determined by notice expiring on 19th January, 19th April, 19th July or 19th October in any year. We draw attention to the fact that the agreement does not provide that the three months' notice may be given " at any time," so as to bring the case within the decision of *Land Settlement Association* v. *Carr* [1944] K.B. 657.

A. We agree that the first point to consider is whether the tenancy became a yearly tenancy on 19th April, 1950; and that, if it did, it became a yearly tenancy with a special stipulation cutting down the customary six months to three months, but not modifying the implied provision that the notice must expire on 18th/19th April. We also agree that some support is to be found for this proposition in *Dixon* v. *Bradford and District Railway Servants' Coal Supply Society* [1904] 1 K.B. 444, in that in each case a yearly rent is reserved by the instrument. It must, however, be pointed out that the authority cited dealt with an instrument which expressed no habendum at all, the court being, as it were, driven to find the habendum by considering the reddendum; in the case submitted, a periodic tenancy follows a fixed term, and it could be argued that the intention must have been to make the period of the periodic tenancy three months. *Lewis* v. *Baker* [1906] 2 K.B. 599 (C.A.) could be distinguished, or sought to be distinguished, in the same way: no habendum expressed, but a yearly tenancy inferred from reddendum and other circumstances (nature of premises). In our opinion, the distinction would be a sound one, the decision in *Mitchell* v. *Turner* (1919), 63 Sol. J. 776, being the nearest in point: a fixed term of one year, rent payable monthly, followed by " until either party shall give three months' notice in writing to terminate the tenancy "; held, such notice need not expire with an anniversary; but indicated that it must expire with a month. We agree, in view of the last-mentioned authority and the " at any time " and other decisions (*Land Settlement Association, Ltd.* v. *Carr* [1944] K.B. 657 (C.A.); *H. & G. Simonds, Ltd.* v. *Heywood* (1948), 92 Sol. J. 111, etc.), that the contention that a notice could expire otherwise than on the 18th/19th of January, April, July or October is untenable. Much of the position was discussed in our " Landlord and Tenant Notebook " in the issue of 23rd April, 1949: 93 Sol. J. 264.

Landlord and Tenant—Refusal of Permission to Instal Electrical Wiring

Q. The tenant of a cottage subject to the Rent Restrictions Acts (old control) is holding over as a statutory tenant. The cottage has few amenities and, in particular, has neither gas nor electricity. He has on several occasions during the last few years asked the landlord for permission to instal, entirely at the tenant's expense, electrical wiring for lighting and possibly heating purposes. On each occasion permission has been refused. No reason is given for refusal. The truth is that the landlord would really like to recover possession of the cottage, and wishes to make the tenant's occupation as uncomfortable as possible. A formal written request by us to the landlord for consent to the electrical installation has produced no reply. While we feel that to proceed with the installation would be meliorative waste, does it go further than this and constitute a breach of any implied covenant not to cut or maim the main walls, etc., so as to give grounds for the landlord obtaining possession or an injunction to restrain the work of installation?

A. While essentially the question is one of degree, we do not consider that the proposed installation would be waste or be otherwise actionable. It is not waste unless the " alteration " is (*a*) substantial, though beneficial (*Marsden* v. *Heyes* (*Edward*), *Ltd.* [1927] 2 K.B. 1 (C.A.)), or (*b*) injurious to the reversion, diminishing its value or increasing the burden upon the inheritance; and it would certainly fall far short of anything held to be waste under those heads. Once it is meliorating and not in breach of covenant, it is virtually non-actionable, either by way of injunction or by way of a claim for damages (*Jones* v. *Chappell* (1875), L.R. 20 Eq. 539). We know of no authority for the apprehended proposition that the tenant would be under an implied covenant not to cut or maim main walls.

Agricultural Land—Mortgagor's Power of Leasing

Q. We are acting for a client who has a first mortgage on a farm property. She is desirous of mortgaging her mortgage for a sum which would leave an ample margin for security, and we can arrange the capital but are hesitant to advise a loan on farm property in view of para. 2 (1) of Sched. VII to the Agricultural Holdings Act, 1948, which amends s. 99 of the Law of Property Act, 1925. In our experience in this locality, which is a farming neighbourhood, it is very difficult in view of this provision to obtain a loan on farm property. Is there any means whereby a mortgagee can be protected from the wide leasing powers given to the mortgagor which might very seriously affect the mortgagee's security?

A. We know of no method of directly circumventing the statutory power of leasing agricultural land conferred by the amendment of the Law of Property Act, 1925, s. 99, by the Agricultural Holdings Act, 1948, Sched. VII, para. 2 (1), and the only suggestion which we can make is that the mortgage (or sub-mortgage, which is what appears to be contemplated in the present case) should stipulate for a high rate of interest to be reduced to the rate intended to be charged, so long as the mortgagor does not exercise his statutory power of leasing. So far as concerns the present case, the existing first mortgage

is, of course, the crucial one for the control of the mortgagor, and our subscribers will be aware that the modification introduced by the 1948 Act does not apply to mortgages made before 1st March, 1948.

Assent by way of Appropriation—POSSIBLE UNDER-VALUATION—SUFFICIENCY OF ASSENT

Q. GM died intestate in October, 1945, leaving a widow and two children (both of full age) surviving. Letters of administration to his estate were granted to the widow alone in September, 1946, the gross value of the estate being shown by the grant to be £859, the net value of the *personal* estate being £187. Full details of the assets of the deceased's estate are not known to us but two of the items consisted of (1) a freehold dwelling-house and premises standing on a plot of land, and (2) a piece of land adjoining. Both properties were in the occupation of the deceased at the time of his death. In December, 1946, the widow assented to these two properties vesting in herself in fee simple, presumably on the assumption that the deceased's estate did not exceed £1,000. In view of the figures mentioned above, it would appear that in making the appropriation the value of the real estate was taken at considerably less than £700, which can reasonably be presumed to be the concession value and not the vacant possession value. It is well known that for the purpose of appropriation it is correct to take the vacant possession value and *prima facie*, therefore, the assent by the widow to herself may readily be wrong. The widow died in February, 1951, having by her will devised the dwelling-house to her daughter and the vacant land to her son. Assents, both dated in June, 1951, have been made to the son and daughter respectively, to give effect to these devises. The grant of probate to the widow's estate shows the gross value of her estate to be £1,878, and the net value £1,835.

We are now acting for trustee mortgagees who are proposing to make an advance to the daughter on the security of the dwelling-house. In view of the facts stated above, are we entitled to accept the assent by the widow to herself (dated in December, 1946) at its face value, relying upon the Administration of Estates Act, 1925, s. 36 (7), or are we bound by the decision in *Re Duce & Boots Cash Chemists (Southern), Ltd.'s Contract* [1937] Ch. 642? It should be mentioned that the original letters of administration to the estate of *GM*, deceased, and a full copy of the will and probate of the widow, were with the deeds when handed to us.

A. As our subscribers will be aware the decision in *Re Duce and Boots Cash Chemists (Southern), Ltd.'s Contract* [1937] Ch. 642 was to the effect that "sufficient evidence" in s. 36 (7) of the Administration of Estates Act, 1925, did not mean "conclusive evidence." Although that decision is not an authority for the meaning of "sufficient evidence," our opinion is that "sufficient evidence" means evidence which is adequate and may be acted upon in the absence of evidence to the contrary. We therefore consider that the mortgagees can safely accept the assent at its face value unless they have evidence that it was not in favour of the correct person. Whether this is so depends upon the value of the property as at the date of appropriation. It may then have been worth no more than £700, if, for example, it was then subject to a tenancy. The difficulty which faces the solicitors for the mortgagees is as to the extent of the inquiries they should make in regard to the value at the date of appropriation. In this connection we consider it significant that s. 36 (7) of the Administration of Estates Act, 1925, refers simply to "purchaser" and not "purchaser without notice," and it occurs to us that this may be an indication that a purchaser (as defined by the Act) is not bound to inquire into the circumstances of the assent. Our opinion is, therefore, that the mortgagees are entitled to accept the assent at face value in the absence of compelling evidence to the contrary. In the absence of authority the matter is, however, not entirely free from doubt and we consider that the mortgagees' solicitors might feel entitled to counsel's opinion at the mortgagor's expense before accepting the title.

NOTES AND NEWS

Honours and Appointments

Mr. J. A. PETRIE has been appointed Deputy Chairman of the Court of Quarter Sessions for the County of Essex.

Mr. BERTRAM LONG, M.C., one of the Registrars of the Principal Probate Registry, has been appointed Senior Registrar of the Principal Probate Registry in place of Sir Horace Pereira, who has retired.

Mr. D. R. KAY, assistant solicitor to Southport Corporation, has been appointed assistant solicitor to Norwich Corporation.

Mr. A. G. LOWE, Legal Secretary, Malta, has been appointed a Puisne Judge, Tanganyika.

The Derbyshire County Council have approved the appointment of Mr. E. W. TILLEY, O.B.E., as assistant Deputy Coroner for South Derbyshire.

Miscellaneous

GRAY'S INN

The following scholarships, exhibitions and prizes were awarded during the year 1952 by Gray's Inn: *Bacon Scholarships*, W. A. B. Forbes (Magdalen College, Oxford), *Holt Scholarship*, A. M. Prichard (London University), *Bacon and Holt Prizes*, M. F. Lefebure (London University), C. B. Robson (Durham University), R. N. Titheridge (Merton College, Oxford), *Arden Scholarship*, R. I. Kidwell (Magdalen College, Oxford), *Atkin Scholarship*, F. P. Neill (Magdalen College, Oxford), M. Stuart-Smith (Corpus Christi, Cambridge) (Note: In view of the particularly high standard attained in 1952 two Atkin Scholarships were awarded), *Arden and Atkin Prize*, S. S. Ramphal (London University), *Holker Senior Scholarships*, R. A. MacCrindle (London University), A. Ferguson (Peterhouse, Cambridge), *Special Leaving Scholarship*, J. M. Collins (Manchester University), *Holker Senior Exhibitions*, J. R. O. Sturgis, J. E. Vinelott (Queen's College, Cambridge), J. C. Wood (Manchester University), C. F. Dehn (Christ Church, Oxford), *Entrance Scholarship*, K. M. Horn (London University), *Holker Junior Scholarship*, J. G. Jones (London University), *Gerald Moody Scholarships*, A. G. Guest (St. John's College, Oxford), K. C. L. Smithies (London University), M. R. Tett (Pembroke College, Cambridge), *Lee Prize*, S. C. B. Macaulay, Second Prize, S. D. Temkin (Liverpool University), E. D. B. Powell (University of Wales), *H. C. Richards Prize*, no entries.

In the last paragraph but one of the article "Town and Country Planning: Financial Provisions—II" (96 SOL. J. 795), it was inadvertently suggested that vendors who had sold land at more than existing use value with an assignment of their claims for loss of development value, might expect under the new arrangements to qualify for compensation subject to a deduction equal to the excess of the sale price over the existing use value. In fact, the White Paper does not support this suggestion, since para. 49 thereof only applies where the vendor has retained the claim.

MINUTES OF THE COURT OF CLAIMS

The Clerk of the Crown states that a limited number of copies of the minutes of the proceedings of the recent Court of Claims is on sale at 25s. each, and that copies may be obtained on application to the Crown Office, House of Lords, S.W.1. The volume comprises a list of the claims adjudicated upon by the court, with judgments and decisions.

SOCIETIES

A new CHESTERFIELD AND NORTH EAST DERBYSHIRE LAW SOCIETY has been formed. Mr. G. Bradley has been elected President, Mr. J. H. Hodkin Vice-President, Mr. G. A. Hotter Secretary, and Mr. G. H. Slack Treasurer.

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